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THE PRESENT OPPORTUNITY OF

The Holding Companies

Why this is the time for them to reëstablish their corporate structures—before the wave of regulation hits them

Because he is one of the most articulate as well as one of the best informed and persistent critics of utility holding corporations, the author of this article was invited by PUBLIC UTILITIES FORTNIGHTLY to set forth his views on what these companies could do and should do, during the current period of depression and readjustment, to set their houses in order, reorganize their financial set-ups, and prepare for the upturn in industry on a basis that will avoid in the future some of the weaknesses revealed in the past. His reply follows.

BY JOHN T. FLYNN

IT is fair to say at the outset that I am opposed to the holding company as an instrument for owning and controlling utility operating companies.

I recognize the fact that there are many men in the industry, as well as some outside it, who believe the holding company is wholly defensible. For myself I favor its complete abolition. Others are content to leave it alone to gradually work out its own problems. In between are various groups who favor varying degrees of modification, or regulation of the holding company system of ownership or management or control.

HERE I do not propose to press the argument for complete abolition of the holding company. Rather I prefer to concede freely that an honest student of the subject may be opposed to this and, what is quite tenable, that even after one has convinced himself that the holding company ought to go,

he may shrink back from the almost insuperable difficulties in the way of achieving this end.

I would like, therefore, to see if there is any common meeting ground where utility executives and their critics may come together in agreement at least on certain phases of the problem.

I do this upon the assumption that many utility leaders will be willing to admit that their present system, in common with all human institutions, is by no means perfect. I also freely admit that many of those things in the present holding company set-up are not the result of deliberate and cold-blooded scheming. They arose in very many cases because they were more or less unavoidable, or because they grew up without the managers being aware at the outset that these growths were forming in the bodies of their systems.

Is it possible to get rid of some of these untoward growths, of some of these defects, without public interference? There is, indeed—and no utility man can shut his eyes to the fact—a growing sentiment against holding companies which is certain to take form in robust and organized movement before very long.

Is there anything the utility industry itself can do to devitalize the virulence of such a movement in advance by eliminating some of the more obvious defects in its financial system?

It is upon that assumption that I proceed here.

One more observation. I am wholeheartedly committed to the theory of large scale operation. The question of the soundness of that need not enter this discussion.

THE discussion of holding companies gets, as most discussions do, into deep waters from a loose use of terms.

What do we mean by a "holding company?"

I use the term as defining a corporation which owns the stocks of other corporations for the purpose of exercising control over those corporations.

A HOLDING company may be organized primarily for the purpose of investment; it may exercise control, but take no part in operation of the corporations which it controls. It may, on the other hand, not merely own and control the stocks of certain corporations, but may actually direct and manage the operations of those corporations. The holding company character may be merely incidental, as where a large industrial or utility company, operating directly its own business, also purchases the stocks of other corporations for the purpose of controlling them, either as part of its business or merely to regulate their relations to its business. It is not always easy, of course, to draw the line. But it is important to observe the distinction between a corporation which owns stocks of others for the purpose of control (which involves heavy purchases of stock) and corporations which purchase the stocks of others purely for investment purposes without any idea of control, such as insurance companies and investment trusts.

Now this being so, let us move along one more step. Here are a dozen operating companies in the utility field. The stock of these companies is owned outright or at least in large

enough volume to assure complete control, by a holding company which we will call A. The A Company, by managing this large group of companies, is able to ensure better managerial skill and better financial support than any separate one of the operating companies can give. The A Company does not merely own and control the operating company stocks, but actually supplies operating management and financial supervision. Is there any objection to such a holding company? Now I have carefully examined the discussion of numerous conferences; have listened to countless addresses and debates; have read hundreds of articles about holding companies. Whenever I have found utility men defending holding companies it is seen that all the arguments are addressed almost wholly to such a holding company set-up as this. And in the arguments against holding companies by critics, the points are almost invariably aimed, not against this kind of holding company group, but at something else.

A GREAT many arguments can be made for such a holding company arrangement. I, myself, do not concede its validity. I insist there is no service the holding company can render which cannot be done at least as well without the holding company, while at the same time the holding company opens the door to innumerable abuses. However, I would not be so very much disturbed if the holding company went no further than the set-up described above. But it goes very much further. Let me describe specifically what I mean:

A, as a holding company, owns the dozen operating companies as already outlined. Now, however, we find that the common stock of A, or a large part of it belongs to the B Company, another holding company. The common stock of B belongs to the C Company and the common stock of C belongs to D.

When the utility man defends his holding company system, does he intend to insist that this series of holding companies is necessary to any essential public purpose? I do not care how large a number of operating companies are controlled by the first holding company, or how widely separated they may be, I am willing to concede that much may be said of that first holding company—the A Company. But I think it is now being borne in on the minds of utility men everywhere that they will never convince the public that the companies B, C, and D are essential to the public interest in the utility field. I have

¶ "LOCAL *operating company securities are so large and so numerous that they could not be taken over by the holding companies, particularly now when people would not substitute the credit of the holding company for that of the operating company. Of course, there would be some difficulty and it would take time to do this. But this ought not to interfere with the adoption of this as a policy to be worked out over a period of years.*"

in mind a utility system which controls 114 operating companies. At the top is the ultimate holding company, the equivalent of the D Company—the master holding company, if you will. Below it are 14 other holding companies which it controls by stock ownership. These are the C companies. There are 14 of them. These in turn own other holding companies—the B companies. Some of these B companies are operating companies as well as holding companies. But they in turn own the A companies —the holding companies immediately controlling the operating companies. Then come the 114 operating companies.

Now I contend here that, while the utility men may make a pretty good case for the twenty-five or more A companies in the first rank of the holding company series, they cannot make for the succeeding companies any argument which will ever satisfy the growing army of holding company critics and, for that matter, the public itself.

BUT this is not the whole story. Please remember that I have named the master holding company the D Company. Unfortunately the financial maze does not stop at this point. Beyond the D Company, in the particular case I have in mind, is an investment trust—an investment trust which actually owns enough of the stock of the D Company to control it. And beyond that investment trust there is still another one which controls the first trust. What possible defense can be made of this network, particularly when this investment trust structure is imposed on it?

Mr. William H. Hodge, vice president and manager of the Byllesby Engineering and Management Corporation, complained recently "that while all kinds of large business enterprise now employ the holding-company plan, the utility holding company has been singled out for criticism." It is quite true that the holding company is coming into wide use. But after all, there is considerable difference between the holding company as used generally in industry and that used by the utilities. The Standard Oil Company of New Jersey is a holding company. It owns the stock of some seventy corporations which it controls and directs. But this set-up corresponds with that which I have described as holding Company A. The Standard Oil owns the whole issue of stocks of the various corporations. Those corporations are little more than incorporated departments of Standard Oil. There is little or no criticism of this in industry. And there would be little or no criticism of this in the utility field if the holding company went no further than this. It is the existence of the B, C, and D companies which has brought all the abuse on the heads of the utilities.

WHAT can they do about it? Will it be necessary for the D Company to relinquish its ownership and control over the C companies; for the C companies to abandon the B companies, and bring the whole structure down to a collection of A companies?

This would amount to a general demobilization of the excess holding company organization. And this is what I would prefer to see. However, looking at it from the point of

Eliminate the Intermediary Holding Companies

"ELIMINATE through reorganizations the holding companies which stand between controlling and operating holding company and its subsidiaries. If the utilities will now set about the rearrangement of their capital structures with this at least as the goal they would perform a great public service and they would do more to allay the rising tide of public revolt than by spending countless millions in publicity."

view of the utilities themselves, this is not absolutely essential. The alternative would be to eliminate through reorganizations the B and A companies which stand between controlling and operating holding company and its subsidiaries. If the utilities will now set about the rearrangement of their capital structures with this at least as the goal they would perform a great public service and they would do more to allay the rising tide of public revolt than by spending countless millions in publicity.

Now I insist that this ought to be done, not merely for the public good, but because, in my judgment, the present system is fundamentally weak from a financial viewpoint. An operating company depends for its financial soundness, like any other corporation, upon its assets and its earnings. The assets of the operating company are as a rule not a source of trouble. They are prime property—plants, lines, physical property of various kinds, franchises, cash. They are goods in use and, as a rule, in good use, earning profits even in the most troubled times. The valuation of the assets, save for rate-making purposes, is not a subject for discussion. The plant of the company is not on the market; its price does not go up and down; it is not fluctuating to dizzy heights and dismal depths with the whim of buyers and sellers. It is about as sound and stable a piece of property as can be found, aside from its obsolesence, which is taken care of in rate making. Therefore, in troubled times there is no serious shrinkage in asset liquidating value to affect the credit of the company, so long as its earnings are sound.

This is not so of a holding company. A holding company has no assets save the securities of its subsidiaries. Where it does not own all of those securities and hence where the unowned part is on the market, the value of the company's assets and hence its actual solvency, at any given time, depends on the condition of the market and the price of its securities. At a time like this, when all security prices have shrunk to very low levels, a holding company, which has all its money invested in perfectly sound

subsidiaries, may find itself actually bankrupt because of the liquidating value of its assets. This is precisely what has happened to several utility holding companies and to scores of investment trusts and other holding companies. There is no escape from it. It is such a tremendous peril to the owner of stock in a holding company that, in my judgment, the man who in the future would own stock in one would be a fool. This fact is now well known to investment experts and to countless thousands of investors. It has dealt almost a mortal blow to the credit of holding companies. They are going to find in the future that one of their chief arguments—their ability to finance their subsidiaries—is going to fall down on them. As a matter of fact, in prosperous times no operating utility company will have very much difficulty in getting the necessary credit. They will need it most in troubled periods. Yet now, when they ought to be able to lean most heavily on their holding companies, we find the holding companies leaning on them for credit. One of the soundest holding companies in every way found it had to abandon an effort to raise money on its own bonds and had to withdraw the issue and put out another one of bonds of its underlying companies instead.

WHY is it this same shrinkage in security asset liquidating value has not affected the credit and solvency of great companies like the United States Steel Company and the Standard Oil Company of New Jersey?

The answer is full of meaning for the utilities. The United States Steel owns outright all the common stock of all its subsidiary companies. You do not see the stock of the Carnegie Steel Company going up and down in either a wild bull or a flat bear market. The assets of United States Steel are intimately and necessarily associated with its physical properties, the subsidiaries being merely agencies of convenience in organization and management. This furnishes the basis for a sound rule of holding company finance, namely, that it should own all the stock of its subsidiary or none and that in no case should the stock of the subsidiary be listed.

The utility holding companies have specialized in issuing the securities of subsidiaries, selling "customer ownership" stock to the local communities, issuing bonds of the subsidiaries in large amounts. The utility field is the only one which has engaged in this form of holding company activity. Of course, it will be objected that it is not possible now to simplify this, that local operating company securities are so large and so numerous that they could not be taken over by the holding companies, particularly now when people would not substitute the credit of the holding company for that of the operating company. Of course, there would be some difficulty and it would take time. But this ought not to interfere with the adoption of this as a policy to be worked out over a period of years.

THERE are some other things which should be done. One of these is to end within utility systems stock manipulation for individual control. Let me illustrate:

Why the Shrinkage in Security Values of Some Utility Holding Companies Has Not Affected Other Holding Companies

"WHY is it this same shrinkage in security asset liquidating value which has affected the utility holding companies has not affected the credit and solvency of great companies like the United States Steel Company and the Standard Oil Company of New Jersey? The answer is full of meaning for the utilities. The United States Steel owns outright all the common stock of all its subsidiary companies."

Here is a holding company which controls an immense system. It, in turn, is controlled by another holding company, which is really a kind of investment trust. We will call the holding company X, the investment trust Y. Investment trust Y controls the holding company X by the ownership of a third of its stock. That stock cost, let us say, $20,000,000. But the holding company X buys stock in the investment trust Y—common and preferred—to the tune of $20,000,000. Thus X holding company furnishes Y investment trust with the money with which to buy control in X. Y is then controlled by a small group of individuals with a comparatively small investment. This is done entirely for the purpose of enriching the controlling group and the funds of investors are used for that purpose. Incidentally these investors are supposed to be represented by the very group which is thus using their funds for their own purposes. Utility leaders have been so busy defending themselves against the public, that they have overlooked the wall they were erecting between themselves and their investors.

ALL of which leads to another complaint which utility men must heed and do something about. It has to do with the whole subject of corporate ethics. I do not mean to imply that the ethics of utility leaders have been any different from the standards of other business men. But the theory of scrutiny of public utilities has been established and the underlying theory of the public interest in them has been completely accepted. The performances of utility men, directors and managers, therefore, come in for

more attention and there is a settled notion in the public mind that it has a right to criticize and to take measures to correct utility conduct.

It is a fact, whether corporate apologists realize it or not, that directors and officials have failed to realize the trustee character of their positions, the fiduciary relationship in which they stand to their stockholders. They have no more right to use the resources of their companies to enrich themselves than a public official has. The public official represents a political constituency; the corporate director represents an economic constituency. I do not intend to go into the details of this matter, but I submit it as a subject of the gravest importance that utility directors and managers shall be guided by the principle of complete and perfect loyalty to the interests of their stockholders, a principle which will necessarily eliminate, if it is followed, all forms of financial manipulation of utility stocks designed to give directors and managers a share in utility ownership in excess of reasonable compensation for their services.

WHEN I can read that utility leaders have met for the purpose of straightening out their intricate financial structures; to discuss ways of eliminating the devices designed to put control with little or no real investment in the hands of a few men, who are more promoters than builders; to erect among themselves a code of ethics with teeth in it to protect, not merely consumers, but stockholders from grasping managers, then I will begin to believe that some sort of salutary self-rule has been launched in the utility field.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

DR. JACOB VINER
Professor of economics, University of Chicago.

"The fixity of utility rates is an important barrier to recovery."

MORRIS L. COOKE
Engineer.

"I would spend one billion on rural electrification alone, without a tremor."

DR. PHILIP CABOT
Harvard University.

"The railroads, under Federal regulation, have achieved a notable failure."

C. M. RIPLEY
Electrical appliance manufacturer.

"Most of the jobs which have been abolished by electricity have been the rotten jobs."

MERLE THORPE
Editor and publicist.

"There are bureaus to investigate and manage everything from the Panama to the Alimentary Canal."

FLOYD PARSONS
Economist and editor.

"Television is a year ahead of schedule . . . corporations will hold meetings of their directorate without the members of the board leaving the different cities in which they live."

ROBERT W. MCCORMICK
Editor and publisher.

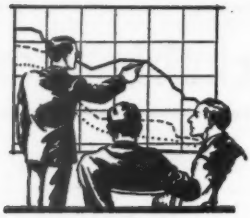
"Just one hundred years after the adoption of our Constitution was created the Interstate Commerce Commission, perhaps the most cancerous growth of all our governmental tumors."

FRANKLIN D. ROOSEVELT
Governor of New York.

"Electricity is a great unifying interest doing more to make us a united nation than any other material factor. To control it for the public good requires national thinking by a national party."

H. T. NEWCOMB
Vice president, Delaware & Hudson Railroad.

"Repeal of many of the present regulative provisions, and modification and mitigation of those that are left, are urgently required if the railways are to bear their proper share in the economic activities of the restored prosperity that should come to the United States when the present depression has run its course."



THE TWO RADICALLY DIFFERENT CONCEPTS OF

Utility "Depreciation"

II. What It Means in Valuation Work

In a former article about so-called "depreciation accounting" (which is is in fact nothing but a comparatively recent development of operating expense accounting), the writer described two entirely different concepts to which the word depreciation has been applied; he made the statement that in the discussion of either one of these concepts all consideration of the other must be excluded if any clear understanding of the subject was to be had. The following article deals with depreciation as that word is used in valuation practice; it has nothing to do with the question of accounting. The views of the two parties to the principal controversy in valuation are here contrasted, for in valuation as in accounting there is a sharp conflict of opinion as to what depreciation is and how it is measured. This controversy can only be finally settled by decisions of the United States Supreme Court.

By HENRY EARLE RIGGS

A BRIEF consideration of the history of depreciation as a deduction from value for rate-making purposes may be helpful in arriving at a better understanding of the two opposing theories which have been developed during the last twenty years.

There were a few valuation undertakings, principally waterworks appraisals, prior to the Michigan Railroad appraisal of 1900. In some of these, depreciation was estimated and deducted. The earliest valuation of property to which the writer has found reference was in 1813, when the city of Philadelphia contemplated the purchase of a toll bridge over the Schuylkill river. An engineer's report on the subject included an estimate of the cost of duplication less depreciation, and suggested that as a basis for negotiation. The total amount of valuation work done prior to the state railroad appraisals was so insignificant that the statement is substantially correct that modern valuation began with the state railroad appraisals which were made in eight or ten states between 1897 and 1912.

In the pioneer Texas valuation no deduction was made for depreciation it being considered that the property must be maintained in first class condition and renewed from time to time whenever necessary.[1]

IN 1900 a statewide valuation of railroads and other specific tax-

[1] Trans. A. S. C. E. Vol. LII, p. 328.

paying properties was made in Michigan in which both cost of reproduction and present value, later termed cost of reproduction less depreciation, were found.[2] Depreciation was determined by inspection. The writer found, when engaged on this early Michigan work, that there were practically no precedents and no literature either on valuation procedure or on depreciation.

The Michigan valuation was followed within the next few years by valuations in Wisconsin, Minnesota, and several other states, in all of which depreciation was found and deducted. Both in Wisconsin and Minnesota the depreciation was found by inspection. In the appraisal made by the state of Washington in 1909 or 1910 the inspection method was abandoned in favor of the use of life tables and of a formula based on age and assumed total life. This method of determining depreciation was more fully developed later by the Bureau of Valuation of the Interstate Commerce Commission in the Federal valuation of railroads.

Between 1900 and 1913 there were at least ten of these state appraisals which were made by different groups of engineers, none of them with much experience in valuation because it was a new kind of work. Consequently different methods of making appraisals were used, different theories were advanced, and much controversy arose over the correctness of these theories and methods.

DEPRECIATION was not mentioned in the famous "rule" laid down by the Supreme Court in Smyth *v.* Ames[3] in 1898. It was not until 1909, in the Knoxville Waterworks Case[4] that the Supreme Court held that depreciation must be found and deducted. This decision did not define depreciation or indicate how it should be determined, and the controversy between engineers grew apace. In 1912 the American Society of Civil Engineers named a committee to study the subject. The final report of this committee was issued in 1917.[5] The subject of depreciation was discussed at great length by the committee at several of its meetings, and it was in connection with the work of this committee that the writer first gave serious study to this important matter.

IN 1913 the Congress passed the Valuation Act and the Interstate Commerce Commission organized its Bureau of Valuation and commenced the most extensive valuation of property which has ever been made. This work is now substantially completed and most of the final valuations have been reported by the commission. The magnitude of this work, the large amount of publicity which it has received, its continuity over a period of twenty years, and the fact that it was done by a government agency have all tended to give very great weight to the theories and methods of valuation used and the conclusions reached. The unsoundness of those conclusions is the most important valuation issue of the present time. It was in connection with this Federal valuation of railroads that the various conflicting theories and methods of engineers en-

[2] Trans. A. S. C. E. Vol. LXXII, p. 1.

[3] 169 U. S. 466, 42 L. ed. 819.
[4] 212 U. S. 1, 53 L. ed. 371.
[5] Trans. A. S. C. E. Vol. LXXXI, 1917.

gaged in valuation crystallized into two clean-cut and definite statements of doctrine.

The Interstate Commerce Commission developed its methods and rules of procedure in the very early stages of the work and has consistently followed them throughout the entire valuation.

The railroads, represented by the Presidents' Conference Committee, have with equal consistency presented an entirely different view of depreciation from that held by the commission.

THE two opposing theories must be fairly stated and contrasted if any clear understanding is to be had of this issue of depreciation of valuation.

The Interstate Commerce Commission holds:

1. That the unit of property which is being valued is the *individual item,* such as a tie, a telegraph pole, a building, or a box car, one of the hundreds of thousands or millions of component items of labor and material which when assembled constitute the railroad, the electric utility, or the gas utility.

2. That each of these items has a service life capable of reasonable estimate, and that as the service life of the item expires the value of the item, and to a like extent the value of the railroad or utility disappears.

3. That in valuation the sum total of all expired service life or "accrued depreciation" should be deducted.

4. That under this theory the perfect or 100 per cent property is the theoretical new property, and the 100 per cent condition can only be had at the moment it is completed and ready to put into service. Indeed, in the commission's valuations depreciation takes place during construction as in the case of ties on a railroad whose construction period runs several years.

5. That under this theory no property can ever be kept intact. After operation begins service life steadily expires and the property continually gets into a more depreciated condition until finally it reaches a stable condition when one half of its total service life has expired. Were it not for salvage value, and the fact that on all large utilities constant additions are being made, the "normal" percentage condition on all old properties would be 50 per cent.

THIS theory is exactly the same as that upon which the commission has based its rules for accounting. The figure deducted in valuation is

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substantially the same amount that would be arrived at by calculating a hypothetical reserve balance under that accounting plan. As applied in the railroad valuations it disregards the fact that the railroads have not established such reserves for way and structures which constitute by far the greater part of their investment; they have not collected the money represented by the hypothetical credit balance in the assumed reserves; they have on the contrary kept their property intact by directly charging retirements or replacements to operating expenses when the retirement takes place, a method used during the lifetime of the industry, and, since 1908, approved by the commission and included in its official accounting rules.

NATURALLY, the railroads have objected to a deduction for depreciation in valuation which is purely hypothetical, which is based on a series of assumptions, and which disregards altogether the methods used for making good the past depreciation.

The railroads contend:

(1) That the unit of property is the railroad as a whole, one complete structure built for service.

(2) That in general the life of the plant as a whole is continuous and indefinite.

(3) That under this theory the perfect or 100 per cent property is that in which the plant as a whole has attained the very best condition for service in which it can be perpetually maintained. It should have become fully coördinated and seasoned, all errors of construction found and remedied, and have reached a condition which can be held uniform year after year through maintenance and replacement of parts when replacement is due.

(4) That under this theory a property can be perpetually kept intact, just as good at the end of any year as at the beginning. Any failure, however, to maintain or to make replacement of parts when due results in depreciation.

(5) That under this theory, depreciation is defined as a subnormal or run-down condition below the best possible permanent condition in which the property can and should be kept to render the particular service which it has to perform.

(6) That there is no relationship at all between any operating expense reserve designed to spread the cost of consumable items over their life, and depreciation. Nor is there any relation between loss of service life of such items and the value of the complete plant for service.

Such a subnormal condition of physical plant is one that can be and is determined by an inspection of the property. The measure of depreciation is the amount of money required to make good the run down condition and restore the property as a whole to full maximum operating condition.

These two theories are radically different and when applied they secure widely different amounts as depreciation to be deducted in valuation.

ANY analysis that is made of the two theories must of necessity give proper recognition of the decisions of the courts bearing on this subject. It must also be borne in mind that each valuation, like each lawsuit, must be determined in the

The Secret of Determining "Depreciation" Cannot Be Found in a Mere Grouping of Words of a Court

"WHEREVER an argument is started on the subject of depreciation, and that occurs every time a group of engineers get to discussing it, each man tries to prove his case by quoting from the court decisions. Stress is laid on this sentence, or that clause, as though the entire statement of the law is to be found in some grouping of words in some particular decision."

light of all the facts of the particular case. The requirements of one property in any industry differ from those of any other property in the same industry. Character and density of traffic or business, nature of climate and terrain, the physical extent and standards of construction of the plant, the quality of its maintenance are among the factors which must be taken into account. The thing being valued is the plant as a whole, the property invested in the service. While it is perfectly obvious that any estimate of construction or of depreciation must follow some form of classification which recognizes different kinds of items, it must be remembered that the classification is merely a convenience, a good tool for use in estimating or accounting, and that the different items in any classification cannot be treated as so many separate things each of which is to be appraised as if it alone were the subject of the inquiry.

The questions as to whether a particular item is in as good service condition, and giving as good service as when newly installed; whether there is anything about its condition that limits or injures the service of the property as a whole; whether it needs repairs or if there is justification for its immediate retirement are questions that should be considered. If it should have been retired or repaired previous to the time of the appraisal then there is depreciation, and that item enters the depreciation estimate of the property as a whole.

ANY formula which finds that all of the ties on all railroads to be in substantially 50 per cent condition (any better than that being due to the recent introduction of treated ties) leads one to query why the uni-

formity. A study of ten years' tie maintenance on a number of different carriers will indicate a substantially different condition on each. The treatment of this particular account by the Interstate Commerce Commission leads to the conclusion that a *fifty per cent condition is one hundred per cent, or the best condition that can be permanently maintained.*

Paradoxical is it not?

The life of many things may be guessed at. Practically all life fables of physical plant are nothing but guesses. When it comes to the life of the railroad or the utility, that is different. It takes a very brave or very foolhardy man to place a life limit on our great railroad systems. The Interstate Commerce Commission says that grading on a railroad is nondepreciable. That is because its life is just as long as that of the railroad and to give a life to grading is to assign a definite date for the abandonment of the railroad. Can anyone imagine a more useless thing than the old grade when the railroad is abandoned? Here there is no scrap value or salvage of any kind; the grading is a total loss. This one account goes far to prove the unsoundness of the "life" theory. Grading does depreciate. Banks cave and wash, cuts slide in, storm and flood take constant toll, and a study of the commission's own published statistics show that the railroads of the United States spend nearly as high a percentage of cost (or cost of reproduction) for maintenance of roadbed, as they do for total maintenance of way and structures.

Yet grading is said to be nondepreciable while the other way and structures properties are depreciable!

SUCH properties as the Consolidated Gas Company, the Detroit Edison Company, the Santa Fe Railroad, and hundreds of others of the well-known service properties can have no life limit placed upon them. As long as the service is needed they will live. It is inconceivable that New York city, Detroit, or the southwestern states can do without those services.

The courts have said very definitely, and have repeated it time and again, that if there is depreciation in utility properties when they are being valued for rate-making purposes it must be found and deducted. What is depreciation? Expired service life of ties? Or of poles or transformers? Or of coal gas benches?

Certainly not. Those things and thousands of others are used up in the process of operating the property and are replaced as a part of ordinary operating expenses. They must be replaced in order that service continue.

Depreciation is a subnormal condition, a run-down condition, a condition that ought not to be and that must be corrected in order that the company may continue to serve adequately and well. It is a condition that is below the very best condition in which the property can be permanently kept for its service. It is the result of neglect, failure to make proper replacements, or to retire property that is no longer useful.

There is depreciation to some extent on practically every utility property. In some cases there is very heavy depreciation. But it is an actual physical state that is below the

best permanent condition that can be maintained.

WHEREVER an argument is started on the subject of depreciation, and that occurs every time a group of engineers get to discussing it, each man tries to prove his case by quoting from the court decisions. Stress is laid on this sentence, or that clause, as though the entire statement of the law is to be found in some grouping of words in some particular decision.

The writer is not a lawyer and does not attempt to interpret the law, but as a layman who has read these decisions many times he concludes that the whole line of Supreme Court decisions from the Knoxville Case in 1909 to the Baltimore Street Railway Case in 1930 forms a logical, sensible, and consistent guide in estimating.

The decisions leave no possible doubt that depreciation, when it exists, is to be found and deducted. They do not, however, justify the belief that elapsed service life, or any other theoretical loss that can never be made good, is to be classed as depreciation.

THE Knoxville Case makes it clear that the owner of the plant should keep his investment in property "intact as it was in the beginning" and that repairs and replacements must be made out of earnings. One cannot have his property "intact" if one must deduct 25 per cent on account of consideration of future operating expenses. If any single clause in a decision is significant the expression "depreciation, if any," as used in the Indianapolis Water Case, clearly indicates that the court still believes that the investment should be kept intact and that it can be done.

The decisions in the Kansas City Southern Railroad Case and the Pacific Gas and Electric Case leave no room for doubt as to obsolescence. Obsolete property is, of course, depreciated property, but the cost of obsolescence is a burden on future consumers who will get the benefit of the new improved unit if and when it is installed. There are thousands of units of property doing good service today which are not of late design and which probably would not be installed if the plant were to be built now, but which will continue to serve for many years because no economy can be affected by their retirement. In such cases obsolescence is not an element of depreciation. Present consumers must not be penalized for the benefit of future consumers who will benefit by economies which may some day be gained by the installation of a better unit.

THE courts recognize that a property may be maintained by re-

¶ "THE *condition of property for service is a fact. If depreciation be based on the fact, and not on hypothesis, and if it be estimated as the amount of money to restore any subnormal condition that may exist, and not by means of a formula based on assumed probabilities of total life, then and not until then will depreciation be understandable.*"

placing worn out parts and charging the cost to operating expenses, or a system of reserves may be established for the same purpose. There is nothing in any case to justify the claim that the Supreme Court has approved either accounting plan to the exclusion of the other.

The affirming by the court on March 6, 1922, of the New York & Queens Gas Case (269 Fed. 277, P.U.R.1921A, 530) is strong evidence that reserves are not essential, as this case goes the limit in supporting the contention of the railroads.

It must be remembered that the courts decide each case as it comes to bar on the particular set of facts of that case as shown by the evidence. The opinion deals with just that case and disposes of issues there raised. The court has not in so many words defined depreciation. The definition as given in dictionaries is loss of value. The court has said that the owner of a utility is entitled to keep his property invested in the service "intact," as it was in the beginning.

THE controversy is over the question "What is a 100 per cent property?" Is it the very best condition which can be had and kept permanently through maintenance and replacement of parts when due? Or is it a purely hypothetical "new" plant, exactly like the one under consideration but "new," assembled at one operation and ready to start operation?

Such a plant never actually existed. There is no necessity now for retaining the old hypothesis which was developed in 1900 in early railway valuation work in order to explain and justify cost of reproduction. That is firmly established as being the value of physical plant stated in terms of the dollars of date of inventory instead of dollars of actual cost. Depreciation should now be stated as a subnormal condition of that same physical plant, rather than a comparison of its present condition with an assumed condition.

Neither has the court laid down a definite formula for computing depreciation. It has specifically held that inspection is necessary to determine depreciation. The court has disapproved an estimate that "was the result of a 'straight-line' calculation based on age and the estimated or assumed life of perishable elements" and has said that "the testimony of competent valuation engineers who examined the property and made estimates in respect of its condition is to be preferred to mere calculations based on averages and assumed probabilities." The form of estimate is not prescribed. Is not an estimate in detail of the amount of money that can, with economic justification, be spent to bring the property back to the best possible condition the most convincing kind of an estimate?

NO satisfactory estimate of depreciation can be made that does not take into account the methods adopted in the past to keep the property intact. The writer has had the opportunity to make extensive analyses of operating expenses and retirements over a long period of years on a number of the large railroads. These studies show that the annual cost of maintaining total way and structures (including grading and

tunnels which are said by the commission to be nondepreciable) will approximate 3½ to 5 per cent of the cost of reproduction on the different carriers and the percentage is remarkably uniform over periods of fifteen to twenty years. A similar analysis of locomotive maintenance shows that from 18 per cent to 22 per cent per year of the cost of reproduction is spent every year for upkeep and retirements. Freight train cars will approximate an average of 10 per cent.

It is hard to agree with the statement that property in a particular account has depreciated 35 per cent when an examination of the accounting records over a 20-year period shows that the company has spent during the period an average of 10 per cent per year of the cost of reproduction of all property in the account for upkeep and retirements. Yet these figures fairly well represent what has actually taken place in railroad equipment accounts. To the average business man it would appear that if 10 per cent per year of the cost of property is being spent on it for maintenance there ought to be little or no depreciation.

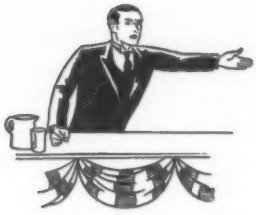
THERE have been too many partisan valuations. Outlandishly high ones, and those that appear to be deliberately confiscatory, are equally objectionable. There have been too many untenable theories advanced, too many words and phrases coined in the effort to convey some particular shade of meaning, and too much confusion of accounting and valuation. What is needed in valuation work, especially with respect to depreciation, is to discard most of the complex terminology, bar all thought of accounting "methods," and get down to plain facts, stated in plain English.

In every valuation case the problem is to ascertain the value of *the plant as a whole used to give the service.* One of the factors is depreciation, or the amount by which that value has become impaired.

THE duty of the engineer in valuation is to find facts and report them. The inventory of property is a definite fact on which agreement should be reached between the parties. The prices to be applied to that inventory as of any valuation date are capable of fairly definite proof. The actual use of property or its usefulness now or in the future is a fact. The condition of property for service is a fact. If depreciation be based on the fact, and not on hypothesis, and if it be estimated as the amount of money to restore any subnormal condition that may exist, and not by means of a formula based on assumed probabilities of total life, then and not until then will depreciation be understandable.

The Most Pressing Problems Before the State Commissions

IN order to obtain authoritative, first-hand information about the current status of regulation, PUBLIC UTILITIES FORTNIGHTLY *has sent a questionnaire to all of the state regulatory bodies. The result of this survey will be published in condensed form adapted for ready reference, in a coming issue of this magazine.*



THE ASSAULT OF THE OFFICE SEEKER UPON

State Regulation

Will the proponents of government ownership be able to inject the "power issue" into the presidential campaign in the face of the popular outcry against the growing cost of government as expressed in mounting taxes?

By HENRY C. SPURR

It is said that some of our leaders, bidding for the Grand Slam in politics, look upon the "power issue" as the longest and strongest suit. There are, however, certain difficulties in the way of its establishment.

In the last analysis the so-called "power issue" is merely a rate question—an appeal to the pocketbooks of the great mass of domestic consumers of electricity. If the attention of these electrical customers is to be diverted this year from the subject of the growing cost of political service as impressed upon them by mounting taxes, the indictment against the so-called "power trust" will have to be made pretty strong. Nothing short of a charge of swollen or extortionate profits will do. Appeals to the moral sense of the voters by asserting that the leaders of the electrical industry are inspired solely by sordid motives and that their influence is corrupting, and appeals to the fear instinct by proclaiming that the power industry is the real ruler of the people may be helpful political technique.

But the basic charge must be that the companies are making too much —very much too much—money.

In order to have such a charge stick, however, it will be necessary to discredit both the state regulatory commissions and the courts. This would be a bold undertaking which would put a severe strain on the intelligence of the average voter.

Suppose we leave the courts out of it for the present and confine our attention to the state commissions.

Commission regulation is involved in the so-called power issue in this way:

A number of years ago the utility companies were, as now, suspected by some of making exorbitant profits. That was one reason why the state regulatory commissions were set up. It was to be their job to ascertain the facts. The commissions were given

authority to examine the books and vouchers of the companies. They could summon witnesses. They had the aid of expert staffs in the pay of the states. They could force the companies to charge reasonable rates. They have acted in many cases.

Now, if, in spite of this, the electrical industry has its customers by the throats, so to speak, and is squeezing them until their tongues hang out, there must be something wrong with the theory of regulation, or else there must be something seriously the matter with the commissioners themselves. There can be no escape from that conclusion.

THE mere charge that the electric companies are gouging the people is an astounding indictment of a large number of public officials whose duty it has always been to prevent anything of that kind. To substantiate that charge it must be shown either that the commissioners have been incompetent or that they have been guilty of neglect of duty or dishonesty. It will not serve to put the blame on the courts. The commissions will have to be the chief object of criticism. One advantage of that is that their reputation is not so well established as that of the courts because they are not as old and as well known. But, notwithstanding that, just how good a target are the commissions apt to be? How will they emerge from this attack? That will depend upon the common sense of the average voter. Take, for example, this reported statement of Governor Roosevelt of New York:

> "We have permitted private corporations to monopolize the electrical industry and sell at the highest rates they can get."

And this of Governor Pinchot of Pennsylvania:

> "The people have been paying heavy charges upon mythical millions that were brought into being by the stroke of pens in the hands of these oligarchs who seem to rule America. The people are being sweated to pay high rates upon this immense mass of fictitious wealth."

Can this be so?

If it is, what have the state commissions been doing for the last two decades? If these statements are true, every state commissioner should be removed from office and a new personnel tried out. If that should prove unsuccessful, all commissions ought to be junked and some other experiment attempted.

IT must not be assumed, however, that the quoted statements should be taken as accurate merely because they are made by honest men in high official positions. They should not be allowed to go unquestioned, if for no reason other than that they reflect on the ability or integrity of a very large body of other officials.

No disrespect is here implied by raising the question whether the quoted statements are true. If they should turn out to be false, this would not mean that they were made in bad faith or with any ulterior motive. High executives cannot be experts in every line. They do not have the time to be. They must, therefore, rely, to a considerable extent, on information furnished them by men acting in the capacity of friendly advisers or ghosts; and unfortunately these ghosts are not always reliable.

So saying, let us inquire: Is it possible that these statements of Govern-

ors Roosevelt and Pinchot can be true?

Or, put it in this way: Is it probable that they are true?

In considering that question suppose we resort to the grand old law of averages.

SINCE 1914 there have been 670 public service or utility commissioners who were either elected or appointed to office by the governors of states. These commissioners have investigated the rates and earnings of electric utility companies in a great many cases. Company properties have been valued. Company books have been scrutinized. Vouchers have been examined. How much money the companies were getting, how much they were spending, and what they were spending it for, have been ascertained. These were not perfunctory investigations. The smallest details of the business were gone into by expert accountants in the employ of the states. Months were spent on some of these cases and hundreds and hundreds of pages of testimony taken. This has cost a lot of money, but the facts were desired and they were secured. The records are open to anyone. There is no need at this late day to speculate about possible profits.

Each of these 670 commissioners, before taking office, was required to swear or affirm that he would perform his duty faithfully. Part of that duty was to fix reasonable rates for electric service. These 670 commissioners represent a fair cross-section of the well-educated and trained portion of the American people, as good a type of citizenship as is to be found anywhere, in legislative halls, executive mansions, college lecture rooms, business offices, or in any other field. Now, is it not reasonable to assume that there must have been in this sizable group—670 commissioners—at least one man who was or is:

1. Honest;
2. Able;
3. Imbued with the so-called public as distinguished from the corporate viewpoint;
4. Immune from infection by necessary contact with representatives of utility companies in the hearing of rate complaints?

It does seem that the last seventeen years of commission regulation which have called for the services of these 670 commissioners must have produced at least *one* commissioner

¶ "GOVERNORS *in sympathy with attacks which have been made on commission regulation in the last two or three years have made a number of appointments to the state commissions of men who could not possibly be accused of the utility viewpoint. They would not have been named if there had been the slightest suspicion that they had any utility leanings. . . . Yet, not one of these new commissioners has been able to discover anything that a long line of their predecessors on the commissions have not already found out.*

who would meet these specifications.

For the benefit of those who are unfamiliar with the history of commission regulation, it may be stated that there have been a very large number of commissioners who would pass such a test 100 per cent. In the early days of commission regulation there was, for example, a commissioner who was both honest and able. No one could say he did not have the "liberal" viewpoint. The most rabid critic of the personnel of the commissions would make an exception in his case. This commissioner once declared that it was the sole business of commissions to protect the ratepayers. The corporations, he said, did not need any protection as they were amply able to take care of themselves. That, is it not, is about as far as anyone could be reasonably expected to go in the public interest or in the interest of social justice as it is sometimes more affectionately termed? Yet not one of these 670 commissioners covering a period of seventeen years, has been able to find and report that the extravagant general assertions as to the enormous profits of the electrical industry are true. What a reputation any commissioner could have made for himself as a faithful public servant if he could have substantiated such charges!

It might also be observed that governors in sympathy with attacks which have been made on commission regulation in the last two or three years have made a number of appointments to the state commissions of men who could not possibly be accused of the utility viewpoint. They would not have been named if there had been the slightest suspicion that they had any utility leanings. These men are regarded as liberal or radical, according to the viewpoint of their supporters or critics.

Yet, not one of these new commissioners has been able to discover anything that a long line of their predecessors on the commissions have not already found out. Indeed, some of them, as soon as required to render judgment on the facts, have been accused of neglecting the interest of the public, and of being too favorable to the utilities.

That being so, what is the presumption?

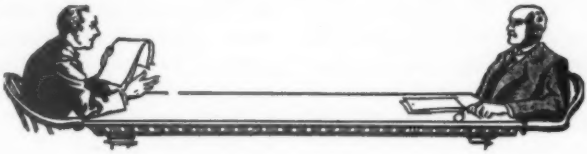
Is it that there must be something wrong with the exorbitant rate propaganda?

Or is it that there must be something the matter with a man as soon as he officiates as a state public service commissioner?

Remember that these 670 commissioners were or are more familiar with the details of the electrical business than any one in the country, outside of the owners of the business themselves. Can it be possible that commissions which, after full investigation, have put their stamp of approval upon electric rate schedules as reasonable have all been wrong? Well, it may be conceded that this would be possible. But judged by the law of averages it would be highly improbable.

But let us turn from presumptions and speculations and from scholastic reasoning to facts.

What is the meaning of Governor Roosevelt's statement that the electrical utilities have been allowed to "sell



The Attacks Are Actually Directed Not against the Courts, but against the Commissions

"THE mere charge that the electric companies are gouging the people is an astounding indictment of a large number of public officials whose duty it has always been to prevent anything of that kind. To substantiate that charge it must be shown either that the commissioners have been incompetent or that they have been guilty of neglect of duty or dishonesty. It will not serve to put the blame on the courts. The commissions will have to be the chief object of criticism."

at the highest rates they can get?"

He was comparing domestic rates of the government-owned Ontario electric system with those of private utilities in New York state. The rates of the private plants, he declared, were much higher than those of the Ontario system. He accounted for this by saying that our own companies had been allowed to sell at the highest rates they could get. He must have meant, therefore, that they had been left free to charge all the traffic would bear; that no restraining hand had been put upon them. This would be a simple, understandable, plain-as-day, complete, and satisfactory explanation to the average voter. It would be important if true.

But the fact is that electric utilities in this country have never been allowed to charge anything they could get, even before commission regulation; certainly they have not been allowed to do so since the commissions were established.

The laws of most of the states forbid that method of rate making. New York, for example, as early as 1907, established two public service commissions and authorized them to fix reasonable rates. Section 72 of the law provided, among other things:

> "After a hearing and after such investigation as may have been made by the commission or its officers, agents, examiners, or inspectors, the commission within lawful limits may, by order, fix the maximum price of gas or electricity to be charged by such corporation or person. . . . The price so fixed by the commission shall be the maximum price to be charged by such person or corporation for gas or electricity in such municipality until the commission shall upon complaint as provided in this section or upon an investigation conducted by it on its own motion, again fix the maximum price of such gas or electricity. In determining the price to be charged for gas or electricity the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not

set forth in the complaint and not within the allegations contained therein."

Since that time the only possible basis for the accusation that the electrical utilities have been allowed to sell at the highest rates they could get must be that the New York commissions, although having the power to prevent it, have failed to exercise their authority. But they have exercised it.

In 1911, for example, the New York commission, first district, among other things, reduced and fixed electric rates of the Queens Borough Gas & Electric Company. This was the first case of the kind to come before the commission.[1] In another case the same commission held, among other things, that every public service corporation must furnish service at the same rates to every class of customers and that no one shall be charged a rate or given privileges which are not demanded from or furnished to every other customer who is served under the same or substantially similar conditions. This was a case involving charges for electric current.[2]

In 1913 a complaint was made to the second district commission that the prices charged by the Cataract Power & Conduit Company were unjust and unreasonable. At the conclusion of the proceedings, the prices charged with the exception of energy sold to a railway company were reduced 28 per cent.[3] In another case an electric rate was held to be discriminatory and ordered discontinued.[4] In still another the rate of 10 cents per kilowatt hour was ordered cut to 8 cents, a reduction of 20 per cent;[5] and in another the commission allowed a return of only 7 per cent where the company demanded 8 per cent.[6]

In a number of other investigations by the New York commission electric rates have either been ordered reduced or applications for higher rates by the companies refused;[7] but enough has been said to show that it is untrue, even in New York, that electric utilities have been allowed to sell at the highest rates they could get.

Nor is that charge against the commissions true elsewhere. Since 1914 there have been more than 200 investigations of the rates of electrical utilities in various parts of the country in which the details of the business have been examined with great care and thoroughness. The object of these investigations was to find out how much the profits—if any—of the companies involved amounted to. Some of these investigations were the result of complaints by the company's customers against the

[1] *Re* Rates of Queens Borough Gas & E. Co. (1911) 2 P. S. C. R. (1st Dist. N. Y.) 544.

[2] Stadtlander *v.* New York Edison Co. (1912) 3 P. S. C. R. (1st Dist. N. Y.) 490.

[3] Fuhrmann *v.* Cataract Power & Conduit Co. (1913) 3 P. S. C. R. (2nd Dist. N. Y.) 656.

[4] Saks & Co. *v.* New York Edison Co. (1913) 4 P. S. C. R. (1st Dist. N. Y.) 138.

[5] Stadtlander *v.* New York Edison Co. (1915) 6 P. S. C. R. (1st Dist. N. Y.) 48.

[6] Moritz *v.* Edison Electric Illum. Co. (1916) P.U.R.1917A, 364.

[7] *Re* Lockport Light, Heat & P. Co. (N. Y. 2nd. Dist.) P.U.R.1918C, 675; *Re* Queens Borough Gas & E. Co. (N. Y. 1st Dist.) P.U.R.1918F, 872; Maires *v.* Flatbush Gas Co. (N. Y. 1st Dist. 1918) P.U.R.1920E, 930; Katonah *v.* Katonah Lighting Co. (N. Y.) P.U.R.1921E, 135; Trustees of Albion *v.* Western New York Utilities Co. (N. Y.) P.U.R.1922E, 119; *Re* Peoples Gas & E. Co. (N. Y. 1923) P.U.R. 1924B, 229; Plattsburg *v.* Plattsburgh Gas & E. Co (N. Y. 1926) P.U.R.1927B, 769.

rates charged. Some were brought on because the companies asked for increased rates, and some were started by the commissioners themselves without formal complaints. In many instances electric rates were ordered reduced and the companies had to comply. In the face of such facts as these, how can it be said that electric utilities have been permitted to "sell at the highest rates they can get?" The mere fact that these extensive and often expensive investigations have been made is a sufficient answer to such a general accusation. Any person interested can ascertain just how much the companies involved were making at the time the cases were before the commissions by looking into the reports of commission decisions. But that is a story by itself. It is sufficient for the purpose of this article to show that the statement that electrical utilities have been allowed to charge "anything they can get" is not so, and, therefore, that the commissions cannot rightfully be accused of any such neglect of duty. Even failure of a commission to order reductions would not prove that the companies had been allowed to exact all the traffic would bear; nor would it account for differences in the Canadian and New York rates.

Now let us consider Governor Pinchot's statement that the people are paying heavy charges on mythical millions "brought into being by the stroke of pens in the hands of these oligarchs."

Hyperbole aside, this is the old watered stock accusation, as perennial and hardy as the wild mustard plant. This assertion is as understandable by the average voter as is the claim that the electrical industry has been allowed to sell at the highest rates it can get. Ask almost anyone unfamiliar with commission regulation who believes utility rates are too high, what he thinks the trouble is and he will probably tell you confidentially that it is "too much watered stock." Even men with more than the average range of information appear to believe it. Forty years ago this was a powerful accusation, and although the watered stock indictment has lost some of the vigor of youth, it is still alive and occasionally put to work. Its hidden weakness, of course, is that it is untrue.

The Supreme Court of the United States declared as early as 1898 [8] that the railroads—and consequently all other utilities including electrical companies—are not entitled to earn a return on the basis of their capital structures. The contention of the railroads in that case was that rates should be high enough to produce revenues which would en-

[8] Smyth *v.* Ames (1898) 169 U. S. 466, 42 L. ed. 819.

¶ "In *not one of the more than 200 investigations of the schedules of electric utilities in different parts of the country since 1914 did watered stock, if it existed, have the slightest influence in determining the reasonableness of rates.*"

able the companies to take care of operating expenses, depreciation, taxes, and interest on their bonded indebtedness, and to pay a reasonable dividend on their capital stock.

The answer to this was that the railroads had been overcapitalized. The Supreme Court said:

> "It cannot, therefore, be admitted that a railroad corporation maintaining a highway under the authority of the state may fix its rates with a view solely to its own interests and ignore the rights of the public. But the rights of the public would be ignored if rates for the transportation of persons or property on a railroad are exacted without reference to the fair value of the property used for the public, or the fair value of the services rendered, but in order simply that the corporation may meet operating expenses, pay the interest on its obligations, and declare a dividend to stockholders. If a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization; and the apparent value of the property and franchises used by the corporation as represented by its stocks, bonds, and obligations is not alone to be considered when determining the rates that may be reasonably charged."

In this case the fact that securities might have fallen into the hands of innocent purchasers was brought to the attention of the court, but nevertheless the court refused to allow capitalization to be made the basis of the return.

Since that Supreme Court decision there has been a lively controversy as to just what the earning basis should be, whether prudent investment or on the value of the company's property; but no one has ever asserted and no company has ever since then seriously claimed the right to earn anything on watered stock. In Massachusetts, it is true, rates have been based on capitalization, but for many years the issuance of bonds and stock has been under the strict control of the Massachusetts commission and no water has been allowed to seep in.

Commissions in other states, however, disregard the face value of security issues in fixing rates. In an early case before the former New York Public Service Commission, Second District, it was said:

> "There has grown up for some reason a very peculiar and illogical notion with reference to the protection of so-called innocent investors in the stock of a public service corporation which deserves a little attention at this point. The underlying conception upon which this notion is based is that the return the public is to pay is based upon the amount of stock and not upon the amount of investment—that it should be reckoned upon the figures printed upon the title deed to the property rather than upon the value of the property itself. There is no law justifying any such view and certainly no equity or justice. Once it is clearly apprehended that a person buying stock in such a corporation is buying only a right to a certain proportion of the dividends, the confusion disappears and the whole matter is put upon a just basis. The amount of the dividends depends wholly upon the business success of the corporation and no one pretends that there is any principle justifying an exaction from the public of more than a fair return upon the value of the property used in the public service. If a purchaser is foolish enough to pay more for the stock of such corporation than would be justified by the reasonable amount of dividends, there is no principle of equity which requires that the loss should be borne by the public, but every principle of equity and law requires that it should be borne by the person making the investment. No one at the present time in any careful consideration of the subject attempts to maintain that the public should pay a return upon the stock."[9]

In another New York case the general misapprehension of the public as to watered stock was alluded to. The commission said:

[9] Fuhrmann *v.* Buffalo General Electric Co. (1913) 3 P. S. C. R. (2d Dist. N. Y.) 739.

"Although this commission has stated many times the true rule which must be adopted in determining what is meant by 'return on invested capital' as applied to a rate case, we will risk a repetition of it for the reason that the arguments made in almost every case which comes before the commission show that the rule is not generally understood. 'Invested capital,' for the purpose of computing rate of return to a public service corporation, means the actual value of the property used in giving the service. This has no connection whatever with the share capital of the corporation, nor is it material whether the capital was raised by the issuance of bonds or the sale of stock. Neither does it make the slightest difference whether the issued capital stock is 'watered' or not, nor to what extent the 'water' may be present. The injection of 'water' cannot add one per cent to the value of the property which is actually used, and that is the only inquiry which the commission is interested in." [10]

IN not one of the more than 200 investigations of the schedules of electric utilities in different parts of the country since 1914 did watered stock, if it existed, have the slightest influence in determining the reasonableness of rates. Therefore, the indirect indictment of commission regulation and of the 670 state commissioners charged with the duty of fixing reasonable rates, which follows the accusation that the people are paying heavy charges on mythical millions "brought into being by the stroke of pens in the hands of oligarchs" is as baseless as the accusation that they have permitted the electrical industry to "charge anything it can get."

The facts which have been developed in the many investigations by state commissions which disprove these assertions and which are open to anyone interested in ascertaining the truth can be ignored as stated only by discrediting the state commissioners. This has been tried in the case of a few individual commissioners where excitement has run high in occasional rate cases, but to besmirch them all would be rather a large order.

It would not be horse sense. If it is attempted it will be the critics and not the commissioners who will emerge from the attack discredited.

[10] *Re* New York State Railways, P.U.R. 1919A, 755.

Oddities About the Utilities

To help to stimulate the market for cotton the Illinois Central Railroad is issuing dining car menus printed on the textile.

* *

FUNDS are being raised in Germany for the construction of a $1,000,000 experimental plant for harnessing the wind and producing electric power.

* *

Two of the important electric companies in Connecticut are extending three months' credit to their customers, as an aid in meeting the current economic situation.

* *

WHAT is reported to be the first experiment of its kind is now being tried out in Elkhart, Indiana, where the street car employees receive, instead of wages, all gross revenue received on their cars above 10 cents a mile.

The Forward March of Regulation

Some of the outstanding court and commission rulings of the past year in the field of the electrical utilities

PART II

BY ELLSWORTH NICHOLS

IN Texas an electric utility was subject to regulation by a municipality which operated a competing plant. The municipality adopted an ordinance which imposed criminal penalties upon the utility in case it should put into effect rates below those prescribed by the ordinance. Relief was asked from a Federal court, which held that the city, in the exercise of its statutory powers to fix rates for a privately owned utility, should not exercise those powers in such a way as to deprive the private utility, through the imposition of a compulsory minimum rate, of the latter's power to survive in the face of municipal competition. It had been testified that the effect of the establishment of the lower rate would be to divert patronage from the privately owned plant to the municipal plant.[33]

SPECIAL contracts have frequently caused trouble. They have often been disapproved as discriminatory. The New York commission went into the question thoroughly last year and held that in order to eliminate any discrimination which might result against any utility customer, or class or locality, by reason of such a contract, the utilities must do away with all special contracts which are at variance with filed tariffs so that no consumer will receive service under a rate not applicable to all customers who receive service under the same rates and conditions. These rates were ordered to be made available to public inspection at all times. It was further ordered that no special contract should be made to give preference in rates to a utility consumer because of the utility's use of the customer's property, but such customer should be billed at the regular rate for the utility service rendered and the utility should pay to the consumer a fair and reasonable compensation for the facilities used.[34] An electrical utility which

[33] Texas Electric Service Co. *v.* Seymour (1931) 54 F. (2d) 97, P.U.R.1932A, 442.

[34] *Re* Special Contracts by Gas & Electric Companies (N. Y.) P.U.R.1931E, 302.

has bound itself by contract to furnish irrigation power to a certain ranch should, in the opinion of the Washington commission, file a copy of the contract with the commission and should specifically set forth the rate charged.[35]

As to the form of electric rates, recent rulings have supported schedules designed to place upon each customer or class of customers, as nearly as possible, the cost of service to them, by use of the minimum charge, service charge, demand charge, block rates, coal riders, or what have been known as 2-part and 3-part rates.[36]

The New York commission has expressed the belief that one form of electric rate structure should be in effect throughout the city of New York, which is served by several different utilities.[37]

Chairman Maltbie disposed of an oft-repeated political argument by stating that the question, in determining fair and reasonable rates, is not whether small consumers should pay the lowest possible rates but whether each class pays rates that are just and reasonable. But he also said that rate making is never a mathematical application of a theoretical principle; there is a large percentage of customers who are served at less than cost, for the reason that it has been found impracticable to devise and apply a system of cost accounting and computation which would carry out the principle literally, and if it were done, it would result in such an elaborate and complicated schedule of rates that the public could not understand it and few could apply it.

Commissions are not in agreement as to the relative merits of the service charge and the minimum charge. For example, the New York commission favors the minimum charge, while the Wisconsin commission favors the service charge. The view in New York, as expressed in the case referred to in the last paragraph, seems to be that the effect of a service charge upon a customer is most important and cannot be ignored in any rate determination although the fundamental objection is not so much economic or accounting as it is psychological. The commission has approved the minimum charge block form of electric rate.

[35] Department of Public Works ex rel. Washtucna *v.* Washtucna Light & P. Co. (Wash. 1931) P.U.R.1932B, 31.

[36] Troy *v.* Alabama Utilities Co. (Ala. 1931) P.U.R.1932A, 435; *Re* Toledo Edison Co. (Mich.) P.U.R.1931D, 491; *Re* Empire Dist. Electric Co. (Mo.) P.U.R.1931C, 315; Elko *v.* Elko Lamoille Power Co. (Nev.) P.U.R.1931C, 14; *Re* Rates & Rate Structures of Corporations Supplying Electricity (N. Y.) P.U.R.1931C, 337; *Re* Rochester Gas & E. Corp. (N. Y.) P.U.R.1931D, 31; Kohn *v.* Philadelphia Electric Co. (Pa. 1931) P.U.R. 1932A, 491.

[37] *Re* Rates & Rate Structures of Corporations Supplying Electricity (N. Y.) P.U.R. 1931C, 337.

¶ "Commissions *are not in agreement as to the relative merits of the service charge and the minimum charge. For example, the New York commission favors the minimum charge, while the Wisconsin commission favors the service charge.*"

The Wisconsin view appears to be that a rate schedule which provides for a monthly service charge to be paid irrespective of whether or not a customer uses any electrical energy is a more scientific rate, at least in so far as residential and commercial lighting service is concerned, than types of electric rates which provide for a minimum bill under which some energy may be used.[38]

It has been stated that a minimum monthly bill is discriminatory in that those customers who use the maximum amount under the minimum bill do not pay their proportionate share of the cost of service, while those who consume little or nothing, or those who consume energy in excess of the minimum bill, are more nearly paying their proportionate share of the cost of service. It is also believed that a service charge for electricity which includes not only strictly customer costs such as meter reading, billing, maintenance, and other fixed charges on company-owned property on the customer's premises, but includes also a consideration of the time and nature of the customer's demand, is more scientific and desirable than a service charge which takes into consideration only the former group of charges, although in particular instances, owing to the lack of sufficient data as to the customers' demand, the ascertainment of such a service charge may not be practicable. A clause proposed by a municipal power plant governing the minimum charge at times of reduced power installation was held to be fair to the customer, on the theory that the minimum charge should not be entirely avoided during partial temporary disconnection.[39]

SPECIAL combinations of service may be more or less expensive to customers according to the way rates are applied and charges billed. In this connection it has been ruled that where more than one meter is installed because of conditions on the company's distribution system, the consumption of such meters should be combined and only one minimum charge should be levied at a given location, but where additional meters are installed at the customer's request, or because of conditions existing on the property of the customer, each meter should be treated separately as if it belonged to a separate customer and the minimum charges should not be combined.[40]

A utility was not required to combine the billing for light and power service to an individual customer so that he might avoid a minimum monthly payment required under a power schedule, where its classification of power and lighting service did not appear unreasonable.[41] Moreover, an electrical utility was held not to be imposing unlawfully discriminatory charges against a hotel operator who, by reason of his peculiar wiring installation, was obliged to take current for power purposes from his general lighting system, when the utility re-

[38] *Re* New London (Wis.) P.U.R.1931E, 369; Young *v.* Davis Mill & Electric Co. (Wis. 1931) P.U.R.1932A, 478; Phillips *v.* Boscobel Utility Commission (Wis. 1931) P.U.R.1932B, 17.

[39] *Re* Public Utilities Commission of Manitowoc (Wis.) P.U.R.1931C, 52.

[40] *Re* Rates & Rate Structures of Corporations Supplying Electricity (N. Y.) P.U.R. 1931C, 337.

[41] Kohn *v.* Philadelphia Electric Co. (Pa. 1931) P.U.R.1932A, 491.

The Rulings Affecting Valuation, Depreciation, and Operating Costs Follow Established Principles

"VALUATION of properties, depreciation questions, proper charges to operating expense—all find their place in the commission rulings of the past year, but no radical change in practice is apparent, and we may say that most of the decisions follow well-established principles. Under falling prices we may watch with interest the future course of adherents to the fair value and prudent investment theories."

fused to sell current at less than regular lighting rates. Such installation was not the fault of the utility, which could not practicably establish a mixed power and lighting rate for customers who had single wiring installation, but was due to the former municipal authorization of the installation established by the customer.[42]

An electric company supplying power to two mills owned by a single customer over the former's transmission facilities was required to add the meter readings of the two mills and to treat the sum as the reading of one meter, but the customer was required to pay for the interest and upkeep upon a line running to one of the mills, so that the effect of the order would be to require the company to deliver current at a single point.[43]

A REGULATION of an electrical utility known as the "multiple tenant rule," which provided that where installation of meters for new customers in premises containing more than one tenant necessitates the installation or changing of a service switch controlling the service to all meters, the switch should be installed (and incidentally paid for) by the customer, was approved as reasonable in view of the fact that the switch is of no value to the company but is a part of the customer's wiring system.[44]

Apartment house owners who rented part of their property to transient guests and other nonhousekeeping tenants were permitted to receive electric service for such apartments only at wholesale rates through a single master meter under a rate classification designed for hotels, clubs, and

[42] Seaberg *v.* Ratón Pub. Service Co. (N. M.) P.U.R.1931E, 417.

[43] Springs *v.* Duke Power Co. (S. C.) P.U.R.1931D, 9.

[44] *Re* Brooklyn Edison Co. (N. Y.) P.U.R. 1931E, 193.

similar properties lodging transient guests, but service to parts of the properties devoted to housekeeping apartments was ordered to be charged at rates comparable to the rates charged for service at other residences.[45]

IN Pennsylvania there is evidenced an intent on the part of public authority to insist that consolidation shall be for the public benefit and that customers shall experience that benefit in their rates. The commission in one instance withheld approval of the absorption by an electric company, serving a large city, of three smaller companies operating in surrounding territory because the merging company had not signified its willingness to give the newly acquired consumers the advantage of lower rates which were in effect in a contiguous territory. It was also observed that the consolidated net income available for return on the properties to be acquired would not justify the continued maintenance of a disparity in rates.[46]

In the same state the superior court was of the opinion that the commission should dispose of a complaint against rates and determine the fairness and reasonableness of the consideration before it approved a sale of property and franchises by one utility company to another where there was a pending complaint against rates and it was thought that the consideration to be paid for the properties might affect the rates.[47]

The Maryland commission has ruled that where a utility company applies for authority to purchase other utility properties at a price considerably in excess of the value which the commission has found for such properties, authority can be justified only by a definite showing of a substantial benefit to the customers who are being served by that company as a whole and without injury to any of them.[48]

ONE of the outstanding decisions relating to intercorporate relations and securities of subsidiary companies was rendered by the New Hampshire commission.[49] One of the high lights of this decision was the ruling that a device known as an "open account," employed by a local operating subsidiary for borrowing money at substantial interest rates from a foreign parent corporation or affiliated concern, whereby the only evidence of indebtedness was contained in book entries and vouchers, came within the scope of a statute which prohibited the issuance of securities for evidences of indebtedness payable in more than one year, since the proceeds of the loan were used to extinguish or call previous outstanding securities of the subsidiary which were payable in more than one year.

The commission also condemned a management contract under which, it was held, the utility properties were actually managed by a foreign corporation in violation of a law prohibiting the operation of public utility properties within the state without the consent of the commission. Further-

[45] *Re* Altamont Apartments (Ala.) P.U.R. 1932B, 258.
[46] *Re* Chester Valley Electric Co. (Pa. 1931) P.U.R.1932A, 227.
[47] Brookville *v.* Public Service Commission (Pa. Super. Ct.) P.U.R.1931E, 157.
[48] *Re* Eastern Shore Pub. Service Co. (Md.) P.U.R.1931E, 363.
[49] *Re* New Hampshire Gas & E. Co. (N. H.) P.U.R.1931D, 225.

¶ *"It has been ruled that where more than one meter is installed because of conditions on the company's distribution system, the consumption of such meters should be combined and only one minimum charge should be levied at a given location."*

more, in connection with management contracts, it was ruled that the owner of a public utility may not increase operating expenses of the subsidiary through its occupation of a special position, and that it is the duty of the utility to construct extensions, additions, and betterments at the lowest possible cost without improper benefits to the controlling company. Although savings should result from group purchasing, the commission held that a foreign purchasing corporation should not be profit maker to both common owners of it and the public utility served.

Criticism was also made of the practice of selling appliances for an affiliated appliance corporation, where it seemed that the operating utility was burdening its own operating expenses for the ultimate benefit and profit of the common owner. Criticism was also made of other matters including the bidding of property at its foreclosure sale, forcing of a default on securities, sale of securities of the parent company by utility employees, advertising for stockholders at ratepayer's expense, and the maintenance of a foreign office.

In Arizona and Vermont the commissions faced the question of loans to parent companies from the proceeds of security issues. The former commission approved the issuance of 2-year notes to refinance short-term notes which had been issued by an operating subsidiary, where the proceeds had been used to loan funds to a parent holding company. The commission took this action because a refusal of such authority would cause the subsidiary to default in paying a legal obligation and place it in danger of a receivership, to the detriment of all *bona fide* holders of its security. The commission, however, severely condemned the practice of making such loans to a parent company from the proceeds of short-term notes.[50]

But in Vermont not only was approval refused for the proposed issuance of securities by an operating subsidiary to meet the maturity of such short-term notes, but authority previously granted for securities which as yet were unissued was revoked, where evidence indicated that such notes had been illegally issued to finance a loan to a foreign holding company.[51] The commission held that a statutory exemption from the necessity of commission approval of security issues payable within one year is intended to provide a means for temporary financing of present corporate needs, and, accordingly, the issuance of short-term notes by a domestic operating subsidiary for the

[50] *Re* Arizona Edison Co. (Ariz. 1931) P.U.R.1932A, 238.
[51] *Re* Green Mountain Power Corp. (Vt. 1931) P.U.R.1932A, 130.

purpose of loaning the proceeds to its holding company without sound collateral security is beyond the powers of the corporation.

THE Wisconsin Supreme Court has clearly stated that whatever rights a public utility company may have in relation to valuation for rate making, its constitutional rights in the matter of issuing securities are entirely different. The court held that the refusal of the commission to allow a utility to issue securities to the alleged full extent of the value of its properties does not violate the company's constitutional rights, since authority of a utility to issue securities is a mere privilege which can be taken away entirely or modified with conditions by the legislature.[52] It was also ruled that contributions or donations advanced by consumers which are properly excluded from the rate base are also properly excluded from consideration in determining the value of the property for issuing securities, although a rate base and a security base are not necessarily the same. The view was expressed that factors which affect the rate base and the rates must be considered by the commission in determining whether a proposal to issue securities for the acquisition of property affords reasonable protection to purchasers of the securities.

SECURITIES issued by a utility without prior authority of the commission, as required by statute, although admittedly proper and entitled to commission approval, are nevertheless void in Missouri and the commission cannot, upon subsequent application, cure by its ratification such original defect. A utility in such a situation was accordingly ordered to redeem and cancel stock thus illegally issued, and, after doing so, it was authorized to issue an additional number of shares in lieu thereof.[53]

Valuation of properties, depreciation questions, proper charges to operating expense—all find their place in the commission rulings of the past year, but no radical change in practice is apparent, and we may say that most of the decisions follow well-established principles. Under falling prices we may watch with interest the future course of adherents to the fair value and prudent investment theories.

[52] Wisconsin Hydro-Electric Co. *v.* Railroad Commission (Wis. Sup. Ct.) P.U.R. 1931C, 433.

[53] *Re* Doe Run-Delassus Light & P. Co. (Mo. 1931) P.U.R.1932B, 212.

What Others Think

Should Utility Rates Follow the Downward Trend of Living Costs?

SOME weeks ago the Alabama commission precipitated wide discussion among the regulatory authorities by refusing to reduce utility rates to conform with the falling price levels of commodities in general. The commission pointed out that a utility's earnings are regulated while the earnings of other industries are limited solely by the economic restriction of what the traffic will bear. Therefore, inasmuch as utilities were not permitted to earn a higher rate of return during the period of prosperity when unregulated industries were reaping large profits, the commission felt that the utilities ought not to be compelled during a period of economic depression to reduce their rates to conform with the falling level of general prices.

This ruling, which was referred to by some writers as the "Alabama doctrine," was not received with unanimous approval. On the contrary, the Utility Consumers and Investors League of Illinois feels that the recent great fall in price levels should have the effect of reducing utility rates. The pamphlet states:

> "During the years from 1922 to 1929, the utilities claimed that the value of their properties should be marked up to take account of the rise in the price level. This claim for reproduction cost was in general approved by the public utility commissions of the country and by the courts, and was used as a justification for raising the valuation of utility properties by some billions of dollars. During the last two and a half years, however, the price level has been steadily falling, until in November, 1931, the wholesale price index of the United States Bureau of Labor Statistics was 30 per cent below its average in 1928. According to the *Electrical World*, the costs of electric light and power construction were in December, 1931, between 19 and 20 per cent less than during 1928. If it is proper to increase the value of the utilities when prices are rising, it is also proper to decrease their value when prices are falling. The arguments formerly used by the utilities to justify high rates should not logically lead them to reduce their charges. The failure to do so is a gross inconsistency which the public can hardly be expected either to forgive or forget.
>
> "This is, moreover, a time when the business interests of the country, including the utilities, are demanding a decrease in the costs of government. The lower price level and the reduced volume of business call, it is said, for a reduction in the burden of governmental expenditures. If this is so, it is also true that the times call also for a reduction in public utility rates in order to lighten the burden upon a citizenry whose money incomes have appreciably shrunk."

IT will be noticed that the argument of the Utility Consumers and Investors League is concerned chiefly with the effect of falling prices on the valuations of utility properties which go, of course, to make up their respective rate bases. As a matter of fact, practically all of the recent decisions from courts and commissions having to do with the determination of the rate base of utilities do reflect some consideration of falling commodity prices as affecting the fair value of the properties concerned. The second paragraph, however, of the above quotation would lead to the inference that the utility's earnings should also be limited in proportion to the ability of its consumers to pay.

The diminution of return is quite a different matter from diminution of a rate base. In other words, assuming a constant rate base, should a utility earning 8 per cent return in 1928 during the boom time be cut down to a 5 or 6

per cent return during the current period of economic depression? This was precisely the question which the Alabama commission decided in the negative. It is also the precise question which a number of witnesses appearing before the Wisconsin commission in its current investigation of the rates of the Wisconsin Telephone Company have answered in the affirmative.

DR. Jacob Viner, professor of economics of the University of Chicago, testified that the failure of public utilities to reduce their rates in accordance with the "general downward trend of prices" was "an important cause" in the length and severity of the present national depression. Dr. Viner said that the utilities share part of the responsibility for inflicting on the public at this time a reduced scale of living. Dr. Viner stated:

> "The failure of utility rates to fall with the general downward trend of prices has been an important factor in reducing the buying power of the country's shrunken national income and in wiping out the profit margin of the country's industry, commerce, and agriculture, and this is forcing upon them a reduced scale of living and of productive effort."

Asked what would be the result if utility rates are not reduced to meet ordinary price reductions, Dr. Viner stated:

> "There would result widespread insolvency, increased unemployment, further impairment of the productivity of governmental tax systems, and quite conceivably extensive collapse of our present economy."

PROFESSOR Frank A. Fetter, of Princeton University, testifying before the same tribunal was of the opinion that a reduction of utility rates would hasten a recovery from the present general business depression. He stated:

> "The crisis calls for the use of every means of relief at hand. One happy feature is that the remedial movement, just as the collapse, once started, must be cumulative in effect to a certain point. The great difficulty is to pass the dead center of stagnation and steady depression in which we now are. After that we may hope to move steadily toward a new level of prices with a restored equilibrium of relative prices."

None of the witnesses called to testify up to the date of this writing in this investigation of the rates of the Wisconsin Telephone Company have been residents of Wisconsin.

THE distinction which has been analyzed in the passage quoted above from the pamphlet of the Utility Consumers and Investors League between the variability of a rate base and the variability of the rate of return, both as affected by fluctuating general commodity prices, was clearly recognized by a scholarly paper prepared and read by General Mason M. Patrick, chairman of the public utilities commission of the District of Columbia, at the recent Round Table Conference in New York city.

General Patrick could not bring himself to go along with the other progressive members at that conference in repudiating a reproduction cost as a measure of value in determining a utility's rate base. General Patrick conceded some theoretical advantages in the "prudent investment" theory endorsed by many of the others present, but he persisted in being very practical in his opinion concerning the best way to get results in going after a rate reduction. Reproduction cost as a necessary factor for a rate base consideration, he argued, has been emphatically and repeatedly endorsed by Supreme Court decisions. It is the law of the land and we may as well make up our minds to accept it. Arguments about prudent investment at this time, however interesting from an academic viewpoint, are in the final analysis futile.

But while he recognized the necessity for a somewhat fluctuating rate base as a result of the reproduction cost factor, General Patrick felt that by voluntary agreement a rate base might be stabilized and any fluctuation of earnings resulting from fluctuating operating expenses might be taken care of through a profit-sharing agreement.

On this point General Patrick stated:

"All that has been said above does not, in any wise, negative the possibility or even the desirability of entering into an agreement or contract, if you will, with a utility setting forth the way in which the rate base may be determined for any year or at any time. Of course, such an agreement should be for a definite and suitable period of years, and in connection with it there might also be a sliding scale of rates, such as has been in force with the Potomac Electric Power Company in the District of Columbia. Although our commission is now endeavoring to modify the existing scale, it believes thoroughly in the principle, and its modifications merely look to a more reasonable return to the company than has been provided by the sliding scale, as it now stands. As illustrating how this method has worked, every year since and including 1925, the company's rates have been lowered, while each and every year its gross revenues from operations have increased, and the rates to the consumers thus established have been comparatively low. For example, the domestic rate for 1925 was 7.5 cents per kilowatt hour, flat, for the current year it is 3.9 cents per kilowatt hour for the first fifty kilowatt hours; 3.8 cents per kilowatt hour for the next fifty kilowatt hours, and 3 cents per kilowatt hour for all in excess of one hundred kilowatt hours."

THE connection between the plan which General Patrick proposed and which has proven such a signal success as applied to one utility in the District of Columbia and the problem of making a utility's return bear some relation to the rise and fall in the level of earnings of regulated businesses becomes quite apparent. With a constant contractual rate base, decreased general commodity and labor prices would have the effect of decreasing operating expenses, which in turn would increase net earnings available for return, and if this amount available for return exceeded the profit-sharing limit set by the agreement, the amount of excess would go back to the public by way of reduced rates. The situation would be reversed, of course, in the event of increasing general commodity and labor prices.

—F. X. W.

PAMPHLET. The Utility Consumers and Investors League of Illinois. Chicago, Ill. 1932.

HIGH UTILITY RATES SEEN AS FACTOR IN BUSINESS DISTRESS. *The United States Daily*. May 18, 1932.

REPRODUCTION COST IN A TIME OF FALLING PRICES. By Mason M. Patrick. Round Table Conference. New York City. 1932.

The Use of Government Agencies for the Dissemination and Suppression of Propaganda

A COUNTRY where everybody is a government officeholder; where the trial and error that builds character will have to be the trial and error of the average government clerk—this is the kind of country Mr. George L. Hoxie, engineer, economist, and author looks forward to if the Great War now going on in America between Socialism and Individualism, is won by Socialism. A black future, mates! If error builds character the average government employee embodies the finest qualities of George Washington, Florence Nightingale, and Frank Merriwell. But would a country where all of us were like that be worth the powder and shot to blow it to Hawaii? We trow not, and so are forced to agree with Brother Hoxie, who roots loudly for the home team of Individualism.

"Character-building is the real goal of humanity," Professor Hoxie tells us in a subhead; and we who are bothered about the Meaning of Life can get some comfort out of that. The strongest characters are built by the give-and-take of a way of life that discovers and rewards natural merit, and that way, says he, is the way of Individualism. On the other hand, the Socialists, since they would have everybody goosestep-

ping in the ranks, including a hundred thousand repressed chairmen of the board, "are indeed unwitting enemies of society." The inference is that society will do well to dose the socialist gentry speedily with rough-on-rats, but this, it seems to me, is to assume that society is better off without enemies, which is equivalent to assuming that a saint is better off minus an occasional hair shirt. With this no true saint will agree.

If the title of Professor Hoxie's book, "Men, Money, and Mergers" conveys no hint of the long and sometimes tedious philosophical monologues that lead him to his concluding subhead, "Individualism is best," it may at least suggest that the volume says something about the electric power industry in America, which has certainly involved mergers, as well as both money and men. Indeed, the title suggests another world-wide literary rodeo by H. G. Wells and Professor Hoxie is not far behind the British master in his effort to present a bookworm's eye-view of the depression, industry, public regulation, profits, holding companies, abstract economics, human instincts, and propaganda.

THE book is worth a busy public utility man's time if only for its chapters on propaganda, especially the one on "Propaganda For Government Ownership." Here Professor Hoxie digests "The Radical Campaign against American Industry" which appears to be the title of the brief and exhibits offered to the Federal Trade Commission by Bernard F. Weadock, attorney, and published by the National Electric Light Association. This reviewer, although interested in all public utility developments and well acquainted with newspaper accounts of utility deviltry, never heard of Mr. Weadock's brief, and did not know that the N. E. L. A. has distributed it. Yet it is a far more astonishing record of a campaign of hammer-and-tongs publicity than the record of the proutility propaganda bared before the Federal Trade Commission. One is equally astonished to learn that this commission which gobbled up the utility "revelations" with great gusto paid no attention to Brother Weadock's amazing story of carefully planned assaults upon teachers, colleges, high schools, and infants-in-arms by the professional battalions of socialism. The commission just refused to accept it; denied, probably that there was any such animal; or concluded Mr. Weadock's attempt to publicize antiutility publicity was just more proutility publicity.

Certainly no sensible business man need feel any high moral indignation at the activities of his socialistic fellow citizens, because the urge to communize business brains in this country is as natural as the urge to load up the family car on Sunday with dogwood blossoms from somebody else's garden. Some people regard it as a God-given privilege but others regard it as a nuisance. In one instance we have the Constitution and the laws of property; in the other we keep fierce bulldogs. There is no reason why anybody should be shocked at Professor Hoxie's recital of Mr. Weadock's disclosures. But it is disturbing when a public tribunal constituted under the laws of the country opens its doors to one group of citizens but slams them in the face of another group that merely wants to continue with a recital of the same story.

The Federal Trade Commission may have decided that the public which it had thoroughly saturated with the publicity methods of the utilities was not interested in the publicity methods of their enemies. But when did this commission become the judge of what goes into the newspapers about utilities?

IT seems likely that newspaper readers would have been interested to learn (as Professor Hoxie tells us), that United States Senators and Congressmen have been lending the "franking privilege" to the public ownership workers so that the United States mails would carry antiutility publicity free

of charge. They would have been interested to learn that the slogan "Get to the minds and hearts and souls of those teachers and through them to the children of our nation" was Public Ownership League, not proutility material! They would have lapped up the story about the 40,000 students in 101 colleges in twenty-five states who had heard speeches by Paul Blanshard, field secretary of the League for Industrial Democracy; 7,000 students and 9,000 citizens who had heard Norman Thomas; thousands of others who had heard Harry Laidler, Henry Neumann, William Pickens, McAlister Coleman, Frank Tannenbaum. They would have scanned eagerly the list of newspapers that used "handouts" from the National Popular Government League far more frequently than the stuff from the Joint Committee on Utility Information. They would have read with great interest testimony of the Public Ownership League's boast that "There is not a city, town, or village in the United States that the league cannot reach with an active, aggressive representative within twenty-four hours."

But, according to Professor Hoxie, the Federal Trade Commission turned its back on all this information; "refused to accept it," he says. It is an astounding statement.

THIS reviewer was interested also in Mr. Hoxie's observations on the Washington newspaper correspondents, the "big shots" of American journalism. They tinge the news from the Capital City with "radicalism" he says, because they are themselves "tinged with radicalism—which they call liberalism." The statement is not without foundation. Anybody who read "The Washington Merry-Go-Round," an anonymous book of last year written by a couple of Washington newpaper men, who will remember the authors' sniffish attitude toward any Washington reporter who made more than $100 a week, and their berserker rage against certain colleagues who, they declared, made as much as $25,000 a year. Whole pages were devoted to denunciations of these "fat cats" of the press who were said to have bartered their souls and bodies to the rich. This, to be sure, at least smacked of petty "radicalism."

But "radicalism" or "liberalism" is not the real story of the Washington correspondent and his handling of news. More important is the average Washington reporter's difficulty in getting both sides; his trouble at separating sense and nonsense. The stuff most often printed from Washington is the stuff that is easiest to get and to write quickly. This means that it often presents only one side. The best men, the highest paid men, know enough and dig hard enough to get both sides of any controversial story. They often denounce the boobs of business and of the "peepul" alike. Most of the others think only business men are boobs.

Moreover, anyone familiar with the Washington scene knows how skeleton statements are handed out from the White House, the departments, and the bureaus, and how swiftly the skeletons have to be dressed up to story-length with speculation or guesses. Since the official who gives the "handout" is frequently unwilling to expand his skeleton statement with oral comment, the correspondent is forced to depend upon imagination, rumor, or his own viewpoint for a full-length story. Unless he is really "on the inside" which the average bureau man is not, he cannot possibly know the whole story and frequently he shoots very wide of the real truth.

There may be "radicalism" or "liberalism" as Professor Hoxie surmises, but there are also the natural Washington handicaps of the reportorial profession, and some plain professional incompetence.

—RAYMOND S. TOMPKINS

MEN, MONEY, AND MERGERS. By George L. Hoxie. New York: The Macmillan Company; $2.00. 232 pages. 1932.

The Growing Value of Beauty as a Factor in a Utility's Relation to the Public

IT will happen again I believe that the artist and the engineer will be amalgamated in one individual as was sometimes the case in that glorious era of the Italian renaissance when such men as Giotto and Leonardo da Vinci and Michael Angelo and Benvenuto Cellini both designed and constructed great works.

"Not because he submitted an 'artistic' rendering, but because of his scheme to erect the scaffold of his daring wide span, did Brunelleschi win the reward for his design of the dome of Santa dei Fiori," says Paul Theodore Frankl in his book "Machine Made Leisure."

He points out further that "every great blossoming of architectural activity went the limit of engineering knowledge in methods of construction. Structural daring always becomes in the end aesthetically most satisfactory."

The book should be read by all engaged in producing gigantic works which transform the physical aspect of the country, particularly by public utilities whose plants loom so large they give the modern scene its distinctive character.

The artist is needed to shape and define our structures to give them a pleasing and satisfactory shape which is in the end also the highest efficiency. The rapid growth of industrialism has outstripped good taste. We are making the world smaller, more accessible, bringing larger sections of it within the ken of more people, but the means by which this is done, the machines of transportation, communication, light, and power, are frequently dull and ugly and commonplace. The artist and the engineer should be brought to coöperate more until that time comes when the practical and constructive and the imaginative and creative faculties are more frequently combined in one head, and the builder of a tank, power line, or car barn will always ask himself "How will it look?" Will it add beauty, harmonize with its surroundings, give utility the aspect of beauty? If not, then an enlightened public opinion will condemn it, and its promoter will lose a measure of good will.

IN the field of transportation Mr. Frankl makes interesting observations. "The speeding up of freight has left a much deeper impression on our daily lives than most of us are aware of." It has made out-of-season luxuries, fruits and vegetables, available the year round. The conquest of space has transformed the world from a static condition to a nomadic one. The motor car has given us the opportunity of combining city and country life, and changed the character of our cities. Air travel has scrapped the traditional ideas of space and time and speed.

Speed is changing our scale of values. The steam engine originally built as a stationary source of power transformed transportation. The entire railroad equipment was developed without considering forms and designs that would reduce air-resistance and increase speed. In speed boats and sea sleds we find careful attention given to design to increase speed, but preëminently it has been the airplane which has used design intelligently, which considered only functional requirements, power, speed, weight, wind resistance. Thus we are led to reconsider from the point of design all our old methods of transportation.

This close relation between design and function must be now considered in all our great works, static buildings and plants, moving parts, rolling stock, trains, cars, and planes, for out of this perfect design for function will emerge the new beauty of the machine age. For this the artist is needed, not the cloistered studio type who holds that art is something apart from life, but the modern artist, with something the constructive genius of the men of the cin-

quecento, who sees in the heterogeneous sprawling bulk of our mechanistic world the possibilities of a newer and greater beauty. This artist, says Lucian Bernhard,

> "will combine the eyes of a painter, the sensitiveness for shape of a sculptor, the love for materials of a craftsman, the feeling for construction of an engineer—he seeks no escape from life—he wants to build—he is a lover of life—he knows how to appreciate the natural beauty of stone, how to bring out the intrinsic aesthetic quality of a sheet of cork or a plate of steel."

—EARNEST ELMO CALKINS

MACHINE MADE LEISURE. By Paul T. Frankl. New York: Harper & Brothers. $2.50. 1932.

The Opinions of Justice Holmes on the Public Utilities

JUSTICE Oliver Wendell Holmes never once permitted political preoccupations or economic theses to color his opinions, either during his twenty years in the Massachusetts Supreme Judicial Court or his twenty-eight years in the United States Supreme Court. It is impossible to say, therefore, what the readers of PUBLIC UTILITIES FORTNIGHTLY would most like to know about his juristic attitude; whether he stood flat-footed for sound regulation of public utilities or for governmental ownership.

It is possible, however, to say with assurance that the Justice poked fun at socialism and at judges who allowed fear of it to sway them. "I have no belief in panaceas and almost none in sudden ruin," he said in 1913, not in an opinion but in a speech. "When twenty years ago a vague terror went over the earth and the word socialism began to be heard, I thought and still think that fear was translated into doctrines that had no proper place in the Constitution or the common law." About the time that "vague terror" was abroad, the Massachusetts house of representatives asked the advice of the supreme court of the state about a statute empowering municipalities to buy and sell fuel. The majority of the court held that this socialistic proposal was illegal; and Judge Holmes (as he then was) wrote one of two dissents, in which he said that when money was taken to enable a public body to offer for sale an article of general necessity, "the purpose is no less public when that article is coal or wood than when it is water, or gas, or electricity, or education, to say nothing of cases like the support of paupers or the taking of lands for railroads or public markets." He thought it no business of the court to say whether such legislation was needed or expedient.

Later, in the Supreme Court of the United States, appeals taken under the "due process" clause of the Fourteenth Amendment most frequently drew from Mr. Justice Holmes expressions regarding public utilities. He was emphatic and often picturesque in opposing the efforts to make that clause a citadel of undisturbed dividends. "But to gather the streams from waste," he once said in a majority opinion, "and to draw from them energy, labor without brains, and so to save mankind from toil that it can be spared, is to supply what, next to intellect, is the very foundation of all our achievements and all our welfare. If that purpose is not public we should be at a loss to say what is." But there was no expression as to whether that purpose should be regulated or operated by publicly owned agencies.

The last quotation is not to be found in my biography of the Justice, but is to be found on page 32 of "Representative Opinions of Mr. Justice Holmes"; and another (pages 255–8), too lengthy to be quoted here, I preferred also to ig-

nore. Although I have long been interested in activities "charged with a public use," and have long thought, incidentally, that coal mining, the most backward of our major industries, ought to be under Federal regulation, I did not believe that my personal predilections should be permitted to unbalance a one-volume biography of a man whom I honestly consider the greatest living American. I was more interested, I am free to own, in the man than in the jurist, the statesman, the philosopher, or the literary stylist. But I tried to do an accurate job, without slopping over, about a fascinating and many-sided personality who has played a big part in our history.

That, I suspect, would be called by a lawyer "a plea in confession and avoidance."

—SILAS BENT

JUSTICE OLIVER WENDELL HOLMES: A Biography. By Silas Bent. New York: The Vanguard Press; 354 pages, with appendix, references, and index. $4.50. 1932.

The Utterances of Congress about the Utilities

In the House of Representatives

THE GOVERNMENT IN BUSINESS

MR. Lozier (D.) of Missouri obtained permission to have reprinted in the appendix of the *Record* an address by Representative Shannon, also of Missouri, contending that the Federal government has forced its way into active competition with private business to an amazing extent. Mr. Shannon's address cited instances of Federal government activity in the specified lines of private enterprise. (*May 26, 1932.*)

LOANS TO THE RAILROADS

MR. Nelson (R.) of Wisconsin, under the title "A Dole to the Railroads," spoke against pending legislation (H. R. 11677) that would repeal in part the Sherman Anti-trust Law as applied to railroads, as well as the Esch-Cummins Law; fix a new rule of rate making for the railroads; set aside the La Follete valuation plan; repeal the present recapture clause of the Interstate Commerce Act, and provide other relief for the railroads. Mr. Nelson failed to see how such relief would be of any benefit to the public in general. In observing that the National Association of Railroad and Utilities Commissioners was in favor of the bill, Mr. Nelson pointed out that some of the members of the Interstate Commerce Commission were also members of the National Association. He inferred that there was a possibility of the action of the National Association being influenced by such Interstate Commerce Commission members. He said that the enactment of such a bill would reward railroad inefficiency, extravagance, and bad management. (*May 21, 1932.*)

GOVERNMENT COMPETITION WITH PRIVATE BUSINESS

BY a vote of 177 to 128 the House passed a resolution providing for an investigation into government competition with private business, particularly with regard to the activities of army and navy stores. The resolution was endorsed by the Chamber of Commerce of the United States at a meeting at San Francisco on May 20, 1932. (*May 31, 1932.*)

Other Articles Worth Reading

AN ANALYSIS OF THE UNIFORM RATE AREA AS A TERRITORIAL RATE POLICY. By Walter E. Caine. *The Journal of Land & Public Utility Economics.* May, 1932.

COMMISSION REGULATION OF PUBLIC UTILITY SERVICE IN CONNECTICUT. By Clyde Olin Fisher. *The Journal of Land & Public Utility Economics.* May, 1932.

SOME USES OF HOLDING CORPORATIONS. By Kenneth Field. *The Journal of Land & Public Utility Economics.* May, 1932.

THE LOS ANGELES BUREAU OF POWER AND LIGHT: FINANCIAL RESULTS OF OPERATION. By Martin G. Glaeser. *The Journal of Land & Public Utility Economics.* May, 1932.

The March of Events

New Revenue Act Affects Electric, Telephone, and Telegraph Companies

THE Revenue Act of 1932, which was approved on June 6th, provides for a 3 per cent tax on electricity for domestic or commercial consumption, based upon electric bills, the taxes to be paid by the person paying for the electrical energy and to be collected by the vendor. No tax is to be imposed upon payments for electricity furnished to the United States, or to any state or territory, or political subdivision thereof, or the District of Columbia.

Prior to the adoption of this provision there had been suggested and rejected 4 and 5 per cent taxes on revenues of electric utilities, and the taxation of privately owned electric utilities without any tax being imposed upon publicly owned electric plants had been proposed. The acceptance by Senate conferees of the amendment resulting in a 3 per cent tax on all electric utilities and the placing of the tax upon the consumer aroused a storm of protest in the Senate.

Since all taxes are included in fixing rates for public utility service, the measure finally adopted seems only to make the payment more direct without actually shifting the burden. Some question was raised in the Senate as to the constitutionality of the provision in so far as it required a municipal electric utility to collect the tax from its customers. It was suggested that this in effect would be an unconstitutional requirement that the public body should collect taxes for the Federal government.

The Revenue Act imposes taxes on telegraph, telephone, cable, and radio messages. Telephone conversations for which the charge is 50 cents or more and less than $1 will be taxed 10 cents; messages costing $1 or more and less than $2, 15 cents; and messages costing $2 or more, 20 cents. Telegraph dispatches and messages will be taxed at the rate of 5 per cent of the amount charged therefor, and cable and radio dispatches will be taxed at 10 cents.

A tax equivalent to 5 per cent of the amount paid to any telegraph or telephone company for any leased wire or talking circuit special service is also levied. This provision does not apply to the amount paid for so much of the service as is utilized in the conduct by a common carrier or telephone or telegraph company or radio broadcasting station or network of its business as such. Also no tax is to be imposed upon any payment received for services or facilities furnished to the United States or any state or territory, or political subdivision thereof, or the District of Columbia, nor for any payment received for services or facilities utilized in the collection of news for the public press or in the dissemination of news through the public press.

Give Views on Charitable Donations as Operating Expense

CHARITABLE contributions by railroads and telephone companies are properly chargeable to operating expense, since they tend to benefit the donor companies by improving conditions in the communities they serve, representatives of the Bell System telephone companies and the railroads told the Interstate Commerce Commission on May 19th during opening hearings in an investigation of accounting for donations to charity, according to a report in the *United States Daily*. The *Daily* states:

"While the commission's inquiry into accounting for charitable contributions was directed originally to a donation of $75,000 to the Emergency Unemployment Relief Fund of New York city by the New York Telephone Company in October, 1931, Examiner A. C. Hansen, presiding Commission official, explained that the inquiry's scope includes all such contributions of telephone companies and railroads alike.

"Roy B. Shaver, assistant comptroller of the American Telephone and Telegraph Company, told the commission that the contributions of the Bell companies to charity are so insignificant compared with total operating expenses that they have no effect whatsoever upon service to the public or upon the rates charged by the companies for such service.

"Such contributions, he said, indirectly benefit the companies by improving conditions in the communities served. In the case of the $75,000 donation to the unemployment relief fund in New York by the New York Telephone Company, he explained that such a contribution might tend to prevent riots with resulting damage to telephone service.

"Pressed by counsel for the public service commission of New York for a more definite answer, Mr. Shaver said that unemployment creates disorders and it was possible that during such unsettled conditions 'someone might drop a bomb down a manhole.'

"E. M. Thomas, comptroller of the Chesapeake & Ohio and Pere Marquette railroads, declared that the railroads had always charged charitable contributions to operating expenses because such donations reacted as direct benefits to the carriers through improved conditions along the road's right of way.

"Such donations, he explained, are not always made in cash, but sometimes take the form of free transportation service in times of emergency, or reduced rates as in the recent drought throughout the country.

"Mr. Thomas said he was appearing in this proceeding as chairman of a committee appointed by the Railway Accounting Officers Association. He said that the roads he represented made regular contributions to Harvard University and William and Mary College, to the former for purposes of educating railroad employees in transportation matters, and to the latter to increase passenger traffic by stimulating interest in the school. Questioned by Mr. Stover of the commission's bureau of accounts as to whether the roads contributed to the Y. M. C. A., Y. W. C. A., and the Boy Scouts, Mr. Thomas said that he did not recall.

"Edward W. Beattie, general attorney for the New York Telephone Company, made the opening statement. He explained that the New York Public Service Commission had ordered the New York Telephone Company to charge to the company's surplus any such contributions, whereas the company contended that it is engaged in interstate business, is subject to the orders of the Interstate Commerce Commission, and that the latter's accounting rules provide for the charging of such items to general expenses of the companies."

Power Board May Probe Costs

THE District of Columbia Court of Appeals on May 31st ruled that the Federal Power Commission was acting within its jurisdiction in ordering a hearing to determine the original cost and net investment of the Clarion River Power Company in its water power project on the Clarion river in Pennsylvania. The court dismissed an appeal by the company from a ruling of the District Supreme Court.

A 50-year license was granted to the company in 1922, and in 1930 the company filed a statement representing the cost of the construction project as $11,032,816. The accounting division of the Federal Power Commission filed a report, after investigation, which recommended the elimination of $6,213,904 from this amount. The company protested and the commission thereupon ordered a hearing, to which the company objected.

The company contended that it was the licensee and not the commission which must be ready currently to determine the cost. This contention was rejected by the court with the statement:

"The statute requires the licensee to submit to the commission statements covering net investment and cost of the project, and we think it plain that the purpose of requiring the licensee to make provision for currently determining the cost is to enable the commission as the administrative body, not the licensee, currently to make such determination. . . .

"It follows, therefore, that the commission in making the investigation to determine the original cost and net investment of the Clarion Company in the Piney project was acting within its jurisdiction."

Alabama

Holding Company Relations to Be Studied in Gas Case

THE Alabama Public Service Commission has started an investigation of the Birmingham Gas Company, and, according to the Birmingham *Post,* the commission is expected to delve into the question of financial set-up of holding companies which control gas distributing companies in the state. Hugh White, commission president, is quoted as saying:

"The depression has brought to light many facts concerning the activities of holding companies. Some rotten spots in the set-up have been disclosed by the Federal Trade Commission utility investigation.

"Congress as yet has enacted no remedial legislation, and the time has come for state regulatory commissions to ferret out all the facts and move to correct the situation to the limit of their authority. The Alabama commission is ready to proceed."

The rate probe was set for hearing after city officials had called for an investigation to determine whether local consumers are being penalized by reason of the fact that natural gas is not made available in Birmingham. Lines of the Alabama Natural Gas Corporation extend to the city limits, but consumers are served manufactured gas generated as a byproduct and sold at wholesale to the Birmingham Gas Company. Advocates of reduced rates contend that consumers would save a considerable sum if

natural gas were made available. The *Post* states:

"The Birmingham Gas Company is owned by American Gas & Power Company, which in turn is controlled and supervised by American Commonwealth Power Corporation, now in receivership.

"The Industrial Gas Corporation which sells gas to a number of industrial concerns in Birmingham, is controlled by the same interests. Up to now Industrial has not been classified as a public utility, but it is understood the public service commission at the coming hearing will take testimony to ascertain whether the corporation should be given that status.

"In 1929, Industrial Gas made a contract with the Southern Natural Gas Corporation under which the latter corporation would not sell gas at retail in Birmingham but would supply Industrial with gas at wholesale after Birmingham Gas Company had sold five billion cubic feet of coke oven gas—the entire output of the Sloss oven. This contract, which was to run ten years, has not been approved by the public service commission.

"The increased business expected at the time of the 1929 contract did not materialize, due to economic conditions, and the Birmingham Gas Company and Industrial Gas have taken no gas from Southern Natural.

"A detailed comparison of the rates of Birmingham Gas Company with the rates charged elsewhere for natural gas is being prepared by the public service commission for use at the June hearing. Domestic consumers here now get a rate of 80 cents per thousand cubic feet, net. The average residential consumer in Birmingham uses 3,500 feet monthly at a cost of $2.80.

"Due to the higher heating value of natural gas, consumers in cities served by the natural product consume approximately 60 per cent as much per month as Birmingham users of byproduct gas.

"The reasonableness of natural gas in a dozen Alabama cities will be investigated by the state commission upon completion of the Birmingham hearing. Local operating companies in these cities take gas at wholesale from the Southern Natural Gas Corporation and complaints that the rates are excessive have reached the commission."

Arizona

Conferences Are Planned to Obtain Rate Reduction

THE state corporation commission, through conferences with the utilities, is to seek lower public utility rates. A resolution adopted by the commission recites that there exists a general depression and the general public is suffering and complaining of rates, while many of the rates now in effect were fixed at a time when prices were on a higher level, and they were presumed to be reasonable at that time.

The resolution states that the commission in recent years has not been provided with any funds whatsoever to make valuations, and it is the duty of the commission and the desire of its members to maintain rates at a reasonable standard. Therefore, the commission resolved that conferences of utility companies, persons, and corporations serving the general public be called at Phoenix and in such other cities and towns as may suit the convenience of all concerned for the purpose of bringing about at the earliest consistent moment reductions in rates commensurate with costs.

California

Ready-to-Serve Charge by Municipal District Is Attacked

A PLEA to directors of the East Bay municipal utility district to reduce its readiness-to-serve charge to the cities for fire protection is contained in a statement issued by City Manager Ossian E. Carr, according to a report in the Oakland *Post-Inquirer*. It is stated that when the municipal utility district was in process of formation as a publicly owned utilty an argument for its adoption was the elimination of the readiness-to-serve charge for fire protection previously levied by the East Bay Water Company on the various municipalities which it served.

The city manager declared that the total readiness-to-serve charge is trivial when compared with the $7,340,000 total income shown by the utility district. The readiness-to-serve charge was said to amount to approximately $350,000. He said that the gen-

eral practice of publicly owned water utilities has been and is to eliminate the standby charge for fire protection purposes and this is a fair practice, in view of the fact that the publicly owned utilities are exempt from taxation.

Rate Association Attacks Los Angeles Phone Rates

BATTLE lines are forming to fight out the question whether telephone rates are too high in Los Angeles, says the Los Angeles *Times*, which adds:

"On one side is the Telephone Rate Reduction Association, which claims the indorsement of twenty-seven civic and business organizations and hopes for the coöperation of the city and county. Opposing rate decreases is the Southern California Telephone Company, which here has a stated investment of about $107,000,000, employs 6,500 persons, and services 390,000 telephones.

"A complaint to be filed with the state railroad commission on the subject of telephone rates here has been prepared by the association, according to an announcement yesterday from the latter body's headquarters.

"The crux of the situation is the fact that privately owned public utilities are limited by law to rates that will return a reasonable profit on the fair value of the property. In this case there is a wide variance of opinion on the point of valuation. The association contends 'the present fair value of the company's plant is not in excess of $58,650,000 and that, therefore, instead of a reasonable profit (on this valuation) which the association believes, should not exceed 6 per cent, the company is making 16.6 per cent on the actual present investment.'

"The company refutes this with the statement that the actual present value of the property is about twice the association's figure and the revenues are but a reasonable return on this true valuation in conformity with railroad commission regulations.

"The existing rates are 25 per cent too high, says the association, and also advocates a corresponding refund under the rates of the last two years. In this connection it argues that a reduction from 25 to 50 cents in monthly residence rates and 1½ cents per call in the business rate effective January 1, 1930, 'was fully offset by subsequent increases in the company's business—10 per cent more telephones.'

"In behalf of the telephone company, it is declared the rates are not nor have they been excessive, but are necessary on at least their present levels to keep the company on an even financial keel. As for overcoming the rate reductions cited, the company submits it has been subject to the same adversities of the unsettled economic period affecting all lines of business generally.

"The association believes the four-party line service should not be supplanted by the two-party system, effective as of the 1st inst. for new subscribers, whereby a two-party line subscriber has the option of a $3.25 base rate monthly for unlimited calls or a $2.50 base rate for sixty calls and 3½ cents for each additional call. Rates are graded upward from base rates according to the style of telephone installed.

"The telephone company regards the discarding of the four-party for the two-party system as of distinct benefit to telephone users and in accordance with the railroad commission's order, made in 1929, that the change become effective as of the first of this month with no more four-party installations thereafter and the discontinuance of all four-party service by the end of this year."

The association, according to this paper, also contends that the company hides its full profits by crediting to the local exchange only 20 per cent of its originating toll revenues instead of 30 per cent as required by the commission, and by charging to expenses annually an amount equal to 5 per cent of the book cost of the plant for depreciation. Complaint is also made that the company is charging to expenses the Federal and state income taxes. The company, on the other hand, asserts that the toll accusation is immaterial since it is merely a matter of into which pocket of the company the money goes. It also defends its method of determining depreciation, which, it is said, is based on an actual engineering survey comparable to the requirements established by an actuary of an insurance company. Taxes, it is said, must necessarily come out of the funds of the company, and they are a distinct and legally allowable item of expense.

Connecticut

Clinton Electric Rate Case Resumed Before Commission

THE valuation and rate schedules of the Clinton Electric Light and Power Company were again taken under consideration last month by the public utilities commission. These proceedings were the result of a remand of the case to the commission by the court, after the commission order fixing rates for the company was set aside on appeal.

Florida

Discrimination Favoring City Employees Is Charged

A TAXPAYER of Orlando, says the Jacksonville *Times-Union*, has charged that the municipal utility plant allows employees, including members of the utility commission, and all plant and office workers, the benefit of a minimum rate, regardless of water and light used. Members of the commission and the manager, it is said, declined to comment on the charges.

It is asserted that not only are the charges of the commission to patrons discriminatory, but that taxpayers bear the additional burden of paying for light and water used by employees free of charge.

Georgia

Light Company Head Defends Power Rate

PRESTON S. Arkwright, president of the Georgia Power Company, in a statement reported in the Atlanta *Georgian*, declares that although the cost of living generally is 34 per cent higher than it was in 1914, the cost of electric service is 25 per cent lower than it was in 1913. His statement was in answer to a question by the editor of the Carroll County *Times* who asked, "Why haven't electric rates come down recently when the prices of other things have been coming down?"

He declared that operating costs of the company had been reduced less than proportionate to the loss of company revenue occasioned by the depression and consequent loss in industrial power sales and commercial business. Fixed expenses, the interest on the investment, and the like, continue unchanged, he said. New rates went into effect in 1929, but the sliding scale, diminishing the cost as the use of domestic current increased, has not compensated in revenue for the losses in revenue from other sources. He said that the company's present residential rates are the best rates and the fairest rates that the company had ever offered to its customers, and that the customers apparently agreed with him in this, since, in the 3-year period since 1929, customers had increased their use of electricity in their homes an average of 53.5 per cent, and the increase continued in spite of the business depression. The promotional features of the schedules are credited.

Indiana

City's Compromise with Water Company Is Attacked by Consumer

THE public service commission recently reduced the minimum monthly domestic rate in Indianapolis from $1.50 for 700 cubic feet of water to $1.08 for 500 cubic feet and cut $66,000 from the city's bill for fire protection. It was estimated that the reduction would cost the company in excess of $200,000 a year. The company was unwilling to take a loss greater than $55,000, so some of the rates for quantities greater than 700 cubic feet monthly were increased. The rates were finally agreed upon by company representatives and representatives of the city of Indianapolis, whereupon the Moynahan Properties Company, which operates apartment buildings in the city, started suit to annul the commission order on the ground that an increase in rates to the apartments would result to the amount of $1,800 a year.

A temporary injunction was granted by Judge Joseph Williams in the state superior court restraining the enforcement of the commission order against the Moynahan Company on the ground that the rates were prescribed without being based upon any evidence or any finding of fact founded upon evidence, but that they were made by virtue of an agreement between the complainants and the water company. Judge Williams said in part:

"There was no finding of an emergency; there was no general investigation by the commission; the increased rates affecting the plaintiffs were not temporary, to remain in effect only until further investigation might be made of the proceeding, but were permanent, and the commission definitely terminated the proceeding by dismissal of both the petitions of the city of Indianapolis and others for decreased rates.

"The plaintiffs, who were not parties to the

proceeding before the commission, cannot be charged with notice that such proceeding contemplated an increase in their rates, and as far as they are concerned the increase was granted without any notice to them."

Commissioner Harry K. Cuthbertson, who wrote the order approving the compromise rates, is quoted in the *United States Daily* as saying that in his opinion Judge Williams exceeded his jurisdiction in the matter and that he would recommend that the commission itself go to the state supreme court and secure a writ of prohibition preventing the injunction against the company to stand. The company, faced with the prospect of not being allowed to charge the higher rates for the larger consumers, although putting into effect lower rates for other consumers, has asked the commission for reëstablishment of the rates formerly in effect.

Maryland

Demands for Lower Electric Rates Are Filed

THE Montgomery County Electric Light Improvement Association in behalf of residents of several communities in Montgomery county has filed petitions with the public service commission protesting against rates of the Potomac-Edison Electric Light & Power Company. The petitions ask the commission to help the consumers obtain "a rate consistent with the rates charged in other parts of Montgomery county" by the utility. The signers of the petition propose a residential rate of 8 cents per kilowatt hour for the first 30 kilowatt hours, 4 cents for the next 100, 3 cents for the next 100, and 2.5 cents for all over 230 kilowatt hours. The filing of the petitions followed a series of mass meetings sponsored by civic organizations.

If the Montgomery county residents fail to get lower rates from the utility, says the Baltimore *Post*, they will either buy the company or establish a competing utility and buy their current from Washington.

Subscribers Threaten Strike against Crank-handles and Rates

RESIDENTS of Relay, according to the Baltimore *Post*, have been contemplating a strike against the Chesapeake & Potomac Telephone Company to obtain a 5-cent rate to Baltimore instead of the present 10-cent rate, and to secure modern "self-starters" instead of the old "crank-handle" equipment.

They complain that while they pay 10 cents to call Baltimore, their neighbors in Lansdowne can make the same call for 5 cents. The reason for this difference in toll charges is that Lansdowne is served by the Arbutus exchange, which is on the line to Baltimore, while the Relay subscribers are served by the Elkridge exchange which is away from Baltimore. This is despite the fact that the Relay subscribers are closer to the Arbutus exchange than Lansdowne. They say that unless they obtain better service at lower rates, they will let their phones go "dead" and have them taken out.

Michigan

Ruling May Open Way for Action on Telephone Rates

SUSPENSION of all proceedings in the suit brought by the Michigan Bell Telephone Company to prevent the public utilities commission from enforcing rates now charged in Michigan has been recommended by William S. Sayres, Jr., special master in chancery, to the district judges of the Federal court. This followed six years of litigation over the telephone rates.

The ruling has been interpreted as paving the way for a new rate case hearing before the commission. The commission six years ago ordered a reduction in rates to the level now charged, and the company moved in Federal court for an injunction. It held that the rates were confiscatory and demanded a gross increase of $6,000,000 over the rates fixed by the commission.

The special master held that under recent supreme court rulings the company is not in a position to obtain relief in the Federal court until it has complied with the state commission's demand that it disclose the nature and cost of its license contract with its parent concern, the American Telephone and Telegraph Company.

Nebraska

Commission Exercises Powers over Grain Storage

BONDS in total amount of $3,635,000 covering grain in storage, have been approved by the Nebraska State Railway Commission. The grain storage law under the commission has had rather a precarious existence. Originally passed in 1915, the law was declared invalid and unenforceable by a former attorney general of Nebraska, as he deemed jurisdiction over the storage of grain outside the Commission's powers and duties, specifically limited to "common carriers." The question was decisively settled contrary to the opinion of the attorney general, and the Nebraska commission administered the law very successfully from the time of its first passage to 1930.

During the fifteen years the law was under the commission no one storing grain suffered any loss. In March, 1930, an extraordinary session of the legislature transferred jurisdiction over the grain warehouse law to the department of agriculture, which is directly under the governor. One of the early bills introduced in the legislature at the regular session of 1931, returned jurisdiction over the storing of grain to the railway commission.

Although the usual large yield of grain in Nebraska was lessened greatly by drought and grasshopper onslaughts, the number of warehouses storing grain under the commission is more than twice that which operated under the department of agriculture. With the customary yield of grain in Nebraska, the number is expected to be greatly augmented during 1932.

New York

Metropolitan Group to Revise Electric Rates

THE Consolidated Gas group of companies, serving principal areas in metropolitan New York, on May 31st was granted sixty days to make a thorough study and revision of wholesale electric rates, according to a statement issued by the public service commission. The company has been directed to submit revised schedules by August 1st to meet criticisms that have been made against the present wholesale rates in the metropolitan area. The New York *Herald-Tribune* states:

"Milo R. Maltbie chairman of the public service commission, recommended this action in a memorandum approved by the commission, which pointed out that complaints and investigations have developed conditions which indicate the need for a thorough restudy of all wholesale electric rate schedules throughout greater New York.

"Some months ago the commission announced that as soon as the residential and retail commercial rates had been canvassed the other rates would be taken up for consideration. This latest action carries out the commission's prediction.

"Mr. Maltbie declared yesterday that some of the complaints made by wholesale users of electricity cite certain objections to the present wholesale power rates of some of the electrical units of the Consolidated Gas system.

"The Consolidated Gas Company made no comment yesterday on the commission's order. In the past it has always been the policy of the company in like matters to submit all data requested by the commission and allow the latter to make public any information concerning rates and rate studies."

Metering Demand Turns Water Users to Hydrants

APPROXIMATELY 100,000 residents of communities on Long Island, says the New York *Herald-Tribune,* may be forced to draw their water from fire hydrants this summer if the Long Island Water Corporation of Lynbrook insists on cutting off service to houses where the occupants refuse to install meters.

The utility, it is said, has shut down its service to about thirty families, in an attempt to enforce metering in place of the flat charge of $12 a year. The Hempstead health officer told the town board that the lack of water constitutes a health menace. Quoting from the *Herald-Tribune:*

"The corporation's application to force the adoption of the meter system has been before the public service commission for a year and the case probably will require three months for completion. The town board has been advised by its water experts that under the law the water company apparently has the right to shut down its service.

"On hearing this, the board made plans

to station an attendant at each fire hydrant in the town tomorrow, to turn on the water for each resident appealing with a bucket.

"Under the meter system, water is sold on a sliding scale, from 38 cents per thousand gallons for the first 18,000 gallons, down to 18 cents per thousand gallons for large consumers. The corporation agreed to supply all services for the installation of meters, requiring only a $5 deposit on each register. The company refused water connections to new houses, except on a meter basis.

"The company maintains that one tract of several hundred acres just south of Valley Stream, from which it pumps water, is worth more than $500,000, more than double the value placed on it by the town. It maintains that the land has a high value as a residential site, and that a loss is suffered to retain the tract merely as a water supply source. The town experts, however, contend that the land is valueless for residential property unless it is filled in, an undertaking requiring a tremendous expenditure."

Oklahoma

New Valuation Would Delay Rate Reduction

THE members of the Oklahoma Corporation Commission, according to the *United States Daily*, have failed to agree on a plan to employ a Texas engineering firm, which has been making a survey of pipe lines for the Texas Railroad Commission, to make a valuation of the Lone Star Gas Company properties in Oklahoma. The Oklahoma commission met with the Texas commissioners recently in an endeavor to work out a plan designed to get an early settlement in the rate case pending against the Lone Star and the Community Natural Gas Company before the Oklahoma commission.

Chairman Paul A. Walker of the Oklahoma commission is quoted as stating that a plan to begin now the new valuation study is a plan of delay not in the interest of the gas consumers of 26 southern and central Oklahoma cities and towns desiring a rate reduction. The *Daily* states:

"At the Dallas session, the Texas and Oklahoma commissioners agreed to use comparable bases of valuation of gas pipe line properties. The Dallas meeting was arranged at request of C. C. Childers, a member of the Oklahoma commission.

"Though a rate hearing involving the Lone Star and Community Natural Gas companies in Oklahoma was completed by the state corporation commission several weeks ago, no rate order has been issued because each of the three members favors a different rate: Mr. Walker, 62 cents per thousand cubic feet; Mr. Childers, 45 cents; and E. R. Hughes, the other commissioner, 68 cents. The present average is about 76 cents per thousand cubic feet at the burner tip."

Oregon

Management Fees Are Questioned in Electric Rate Probe

PUBLIC Utilities Commissioner Charles M. Thomas, in his rate case against the Northwestern Electric Company, has objected to payment by the utility of part of its earnings to the Electric Bond & Share Company for services in the operation of the Northwestern. These payments are reported to have been $55,000 in 1931. He insists that the money is paid by the ratepayers and that there is no excuse for it, says the Portland *Journal*. Company representatives assert that the amount is justified and that the services rendered are valuable to the company.

At hearings before the commissioner it was testified that any moneys spent by the company in combating initiative or referendum measures are charged to the stockholders and not to the ratepayers. Referring to testimony concerning the company's organization by Guy W. Talbot, president, the *Journal* states:

"Talbot testifies that all common stock in the Northwestern is held by the American Power & Light Company and that the Electric Bond & Share owns 20 per cent control of the American Power & Light. He denied Electric Bond & Share controlled the American Power & Light. Talbot traced his activities in Oregon, telling of his start in the utility business and bringing the history up to date."

South Carolina

Commission Plans Power Rate Adjustment

THE state railroad commission, according to a report in the Columbia *Record*, last month met in executive session with members of the electrical utilities division to evolve a plan for putting adjustments of power company rates into effect in South Carolina. The *Record* informs us:

"In addition to regular members of the commission, Attorney General John M. Daniel, Irvine F. Belser, and A. F. Woods of Marion as legal advisers of the commission attended the conference.

"Members of the electrical utilities division present included A. R. Wellwood, chief engineer who presented suggestions as to the procedure; W. J. Cormack, statistical secretary; D. E. Cohn, statistician; and engineers."

Virginia

Appeal Expected from Commission Water Rate Order

VIRGINIA'S latest utility rate case, the bid of the Alexandria Water Company for a 40 per cent increase in rates before the state corporation commission, says the Richmond *News-Leader*, is being appealed to the supreme court of appeals of Virginia. This was disclosed when the company asked the commission for a copy of the case record and announced its purpose.

The commission granted an increase in water rates of 10 per cent. The valuation of the company's properties was a major element of dispute in the case. The company valued its properties at $1,900,000, while the commission estimated a valuation for rate-making purposes of $1,150,000. The net return as figured by the company under the commission's ruling was 6.4 per cent.

Wisconsin

Charge for Cradle Type Phone Declared to Be Unwarranted

A FIRM of Milwaukee attorneys has complained against the continued charge of 25 cents a month for use of a cradle type telephone. The complaint is made in a letter to the company, a copy of which has been sent to the commission. Unless steps are taken to remedy the situation they say that a formal complaint will be filed with the commission.

The letter, according to the Milwaukee *Journal*, declares that the firm in question has been paying 25 cents a month for the use of a cradle phone since October 9, 1929, the total amount paid being $8. As an ordinary telephone would be provided without extra charge, the complainants say that users of the cradle telephone should not be required to pay more than the difference in cost between the cradle and ordinary telephone. After such difference has been paid, they say, any additional charge is a "pure source of unwarranted profit" to the telephone company and "an unwarranted burden upon the subscriber."

Suburbs Joining Milwaukee Phone Case Question City's Water Rates

EIGHT suburbs, says the Milwaukee *News*, will join Milwaukee in its fight for lower telephone rates. But while Milwaukee is making an effort to hammer down telephone rates, it may find some suburbs asking the city for lower water rates. This was indicated when Attorney George H. Gable of Whitefish Bay, in the midst of the telephone rate discussion, said, "Perhaps we ought to investigate Milwaukee's water rates, too." He argued that the physical valuation of Milwaukee's waterworks has declined and the cost of laying mains and digging tunnels has dropped.

The common council of Milwaukee refused to appropriate $15,000 for an investigation of the telephone situation in preparation for its demand for lower rates. City Attorney Max Raskin said that this would cost the local telephone users $100,000 a year. He called opposition to the appropriation false economy.

The Latest Utility Rulings

Financial Backers of Utilities Should Forego Dividends during Hard Times

THE Arizona commission is apparently of the opinion that financial backers of public utility companies ought to forego the amount of return which they might normally expect from their investment during a period of general economic depression. The commission fixed rates admittedly inadequate to yield a reasonable return for an irrigation company at an emergency level during the current period of economic depression, in order to encourage the financially pressed farming consumers to continue service and to plant larger crops and thereby maintain, if possible, the existence of the entire project. It appears that for the last two seasons the condition of the farming consumers of this company has become desperate by reason of the failure of crops to bring in some cases even the cost of material, supplies, and overheads incidental to their production. The commission stated:

> "The condition of the farmers is desperate, indeed pathetic, as evidenced by the testimony of landowners of practically the entire district. This condition, however, is largely due to the economic depression which exists, and could not be greatly alleviated if the present rate were cut in half. On the other hand, the depression has affected all lines of activity and extends to the present financial backers of the water company. As we have previously stated, there must be unselfish coöperation in order to bring the company, as well as the farmers, through this crisis. . . . We believe that the water company has greater prospect of securing ultimate returns upon its investment by the adoption of this rate for the experimental period of 1932 than by the application of a higher rate which might totally discourage the farmers."

Re Cortaro Water Co. et al. Docket No. 2742–E–269, Decision No. 6318.

Rate Fixing by Agreement Held Illegal in Indiana

IT was recently reported in these pages that the Indiana commission, in the course of hearing a petition by the city of Indianapolis for a reduction of rates of the Indianapolis Water Company, approved of an agreement reached between the city and the company whereby the minimum monthly charge for small meters was reduced from $1.50 to $1.08. The charge incidentally involved some increase in rates for water used by large consumers. Because of this incidental increase, Judge Williams, of the state superior court, granted an injunction sought by certain large consumers against the rate revisions authorized by the commission's order. Judge Williams stated:

> "The order shows upon its face that the rates prescribed therein were not based upon any evidence or any finding of fact founded upon evidence, but that they were made by virtue of an agreement between the complainants and the water company.
>
> "There was no finding of an emergency; there was no general investigation by the commission; the increased rates affecting the plaintiffs were not temporary, to remain in effect only until further investigation might be made of the proceeding, but were permanent, and the commission definitely terminated the proceeding by dismissal of both the petitions of the city of Indianapolis and others for decreased rates.
>
> "The plaintiffs, who were not parties to the proceeding before the commission, cannot be charged with notice that such proceeding contemplated an increase in their rates, and as far as they are concerned the

increase was granted without any notice to them."

Commissioner Cuthbertson, who wrote the opinion in the commission decision, announced that he would attempt to carry the matter to the state supreme court since he felt that Judge Williams had exceeded his jurisdiction in granting the injunction. *Moynahan Co. et al. v. Indianapolis Water Co.*

Kansas Regulation of Private Motor Carriers Is Sustained by the Supreme Court

CHIEF Justice Hughes, delivering an opinion of the Supreme Court of the United States, has held that the Kansas Motor Vehicle Act is not invalid as to private motor carriers in so far as such carriers are required to file liability insurance policies, where it appears that the policies are not intended to require security for passengers or cargoes carried, but only to protect third persons from injuries to their persons or property. The court also held that the Kansas act was not invalid as to private carriers merely because it required them to obtain a license from the public service commission of that state. The court pointed out that the requirement was purely formal since the commission had no authority under the act to refuse a license if the described information is given with the application, and the liability insurance policy is filed, and if there is a compliance with regulations and the payment of a license fee. The regulations and license fee were found not to be unreasonable. The license fees were found to bear a substantial relation to the expenses of administration over such class of carriers and go into the highway fund. The court opinion stated in part as follows:

> "The distinction made by the statute between public and private carriers with respect to the obtaining of certificates of public convenience and necessity, and as to rates and charges, indicates the intention to keep separate the special responsibilities of public carriers from the more limited but still important duties which are owing as well by private carriers, in protecting the public highways from misuse and in insuring safe traffic conditions, and there is no reason to conclude that the authority given to the commission will not be viewed and exercised accordingly."

Continental Baking Co. et al. v. Woodring et al. No. 677.

Nebraska Curbs the Cut-rate Cab

THE Nebraska commission has followed the recent order of its sister commissions in Connecticut, Maryland, and the District of Columbia in promulgating rules designed to curb the activities of the cut-rate taxicabs now wreaking such havoc with the mass transportation systems of so many of our large cities. The action of the Nebraska commission arose in the disposition of a complaint by the Yellow Cab Company, an old and established taxicab operator, against the recent invasion of Omaha by the cut raters. The complaint alleged the usual abuses practiced by this type of carrier: the driver-rental system, the use of deteriorated equipment, the failure to provide public protection, the exploitation of the drivers, the damage done to established carriers, and the generally inadequate and discriminatory service resulting from the use of flat rates.

The Nebraska commission, after reviewing the few decisions on the subject, particularly the recent decisions in Washington, D. C., decided: (1) that, in the exercise of its statutory duty to

regulate motor carriers, it had power to control taxicabs; (2) that it had power to fix minimum as well as maximum rates for such service; (3) that it had power to require taximeter rates to be substituted for flat rates, and (4) that it could require such carriers to obtain certificates of convenience and necessity before operating. The commission accordingly made orders along these lines. *Re Yellow Cab & Baggage Co. et al. Application No. 9601.*

Retroactive Rate Charges Held Unlawful in Connecticut

ALTHOUGH a utility may, under the laws of Connecticut, charge rates which it has filed itself without first obtaining the specific approval of the commission of that state, such a utility is not justified according to a recent opinion of the Connecticut commission fixing the rates of the Lakeville Water Company, to increase rates during the billing period so as to make them retroactive, or in increasing its rates without notice to its patrons, given in advance, of the effective date of such rate increases. The commission also held in this case that depreciation should be determined on the basis of the original cost of a utility's property, which is fixed, and not on the basis of a fluctuating reproduction cost. *Re Lakeville Water Co. Docket No. 5764.*

Diminishing Demand Held Grounds for Refusing New Taxicab Permits in Philadelphia

A PETITION by individual taxicab operators to put additional cabs into service in the city of Philadelphia was refused by the Pennsylvania commission, where evidence indicated that, because of diminishing demand for taxicab service in that city, a fleet operator had recently been obliged to remove approximately 250 cabs from the streets of the city. This appeared to the commission to be evidence of the lack of public need for additional vehicles.

Independent operators were also refused permission to operate without restriction in any part of the city, where the effect of granting such liberty would be to congest areas where passenger traffic was heavy. The Yellow Cab Company, which is the main incorporated fleet operator in the city, was permitted to render city-wide service because of its general supervision and management through a telephone system of the movements of its individual cabs.

Restrictions previously placed upon the operation of the independent cabs, however, were so modified in the interest of public service as to permit the drivers of such cabs to receive passengers either at the stands designated in their certificates, or when returning directly to their stands. Taxicab operators who had selected the stands designated in their certificates without full appreciation of stand restrictions, or whose stands had become unprofitable because of the diminishing demand for service at such locality, were permitted to file petitions for a substitution of different stands, provided due consideration would be given to the number of cabs already authorized to operate from any particular stand. *Re Weick et al. Application Docket Nos. 20115 et al.*

Other Important Rulings

THE United States Supreme Court has sustained the Idaho statute taxing the generation of electric power, notwithstanding the fact that such power may be, immediately following its generation, transmitted in interstate commerce. The court held that the process of generating electricity is essentially local just as if electrical energy were a physical thing. It was contended by the appealing party that the tax was not imposed upon the manufacture or production or extraction of a product of nature, but upon the transfer of energy which is, in the case of electrical generation, constantly in motion from the instant of its creation. Instantaneously thereafter it is transmitted to the destination of its consumption. The court, however, pointed out that in view of the fact that electrical energy could not be stored in advance but must be produced as called for, made it impossible to break the continuity of action between the point of generation and the process of transmission. Nevertheless, the court felt that the process of converting water power into electrical energy as distinguished from the transmission of such power is no less real than the conversion of wheat into flour. *Utah Power & Light Co. v. Pfost et al. (U. S. Sup. Ct.) No. 722.*

The delinquency of the former holder of a certificate of convenience and necessity was not considered as prejudicial to the petition of the new holder to the Colorado commission for approval of the transfer, where evidence indicated that the new holder was innocent of wrongdoing or collusion with the former holder, and appeared likely to be a satisfactory operator. *Re Adams et al. (Colo.) Application No. 1261–AA, Decision No. 4225.*

The supreme court of Utah has held invalid regulations adopted by the state board of health requiring proprietors of soda fountains, root beer stands, ice cream parlors, and other establishments serving beverages to sterilize receptacles before each individual service by live steam or complete immersion in boiling water, or to use individual paper receptacles. The court held that the board of health had exceeded its statutory powers to make regulations for the preservation of public health since the statute, if construed to authorize such regulations, would be an unconstitutional delegation of legislative power to an administrative agency. *Utah v. Goss. (Utah Sup. Ct.) No. 5055.*

New rates for butane-air gas have been approved by the New York Public Service Commission for the Lowville Gas Corporation in the village of Lowville. The rates involve a minimum monthly bill of $1, carrying the use of 300 cubic feet of gas, with a second step of 1,700 cubic feet at $2.25 per thousand, and a third step of 8,000 cubic feet at $1.75. The new rates, however, are estimated as likely to leave a deficit. *Re Lowville Gas Corp. (N. Y.)*

A section of the Texas Motor Vehicle Act which provides that "no commercial motor vehicle, truck-tractor, trailer, or semitrailer shall be operated on the public highway outside of the limits of an incorporated city or town with a load exceeding 7,000 pounds on any such vehicle or train or combination of vehicles," providing that no such vehicle having a greater weight than 600 pounds per inch width of tire on any wheel concentrated upon the surface of the highway shall be operated on the public highways outside of the limits of an incorporated city or town, was held by the Supreme Court of the United States not to violate the due process clause of the Fourteenth Amendment of the Constitution. Justice Hughes, rendering the opinion of the court, held that the statute was a valid exercise of the state's police power to prevent the wear on the highways caused by excessive weight of motor

vehicles. The court also held that the statute was not repugnant to the commerce clause of the Constitution insomuch as Congress had so far failed to regulate with regard to weight limitations of interstate motor carriers. *Sproles et al. v. Binford et al.* (*U. S. Sup. Ct.*) *No. 826.*

Live stock commission merchants who, as consignees of live stock unloaded at the yards of a transit company, were required to pay an extra charge of 25 cents per car for such unloading during a period of Federal railway control, were held by the Supreme Court of the United States entitled to recover the amount so paid as reparation in a proceeding against the transit company and the director general of railroads, where a showing was made that the charge was unlawful. The commission merchants had deducted the amount of charges from the proceeds of the sale of the live stock in remitting the same to their principals. Because of this fact, the director general and the transit company contended that the commission merchants had not themselves suffered any pecuniary loss. The court held that that fact did not relieve the defendants from paying reparations to the commission merchants since the latter were factors for the shippers with the duty to resist illegal exactions. The charge was held to be unlawful in view of Interstate Commerce Commission findings to that effect. *Adams et al. v. Mills et al.* (*U. S. Sup. Ct.*) *No. 581.*

The Pennsylvania commission, in sustaining the complaint of an incorporated cab company operating in the city of Philadelphia against alleged unlawful operations of a number of independent taxicab operators, was of the opinion that in a proceeding of such a nature no collateral attack could be raised as to the merits of conditions originally incorporated into the independent operators' certificates, a breach of which constituted the grounds for the complaint. *Yellow Cab Co. of Philadelphia v. Proud et al.* (*Pa.*) *Complaint Docket Nos. 8993, 8995, 8997 et al.*

In hearing a petition of certain citizens of the city of Santa Fe for a revision of electric rates charged by the New Mexico Power Company, the New Mexico commission overruled a contention that neither the Constitution of the state nor its laws conferred upon the commission of that state jurisdiction to regulate electric rates. The commission's opinion pointed out that this question had previously been before the state supreme court in the case of Seaberg *v.* Raton Public Service Company. Although the court did not directly pass upon the question, its language indicated in the opinion of the commission that the latter had jurisdiction over the subject matter involved. *Citizens of City of Santa Fe v. New Mexico Power Co.* (*N. M.*) *Docket No. 121.*

The court of appeals of the District of Columbia has affirmed the supreme court of that jurisdiction in upholding the authority of the Federal Power Commission to determine the original cost and net investment of projects constructed by its licensees. The decision resulted from an appeal taken by a power company contemplating the exploitation of the Clarion river in Pennsylvania. *Clarion River Power Co. v. Federal Power Commission.*

Following a recent decision of the Federal district court, it was held that the city itself should be the unit on which rates should be determined. The company contended that the rates should be fixed on the so-called "system-wide" basis. Surplus plant facilities located in Peru (Ind.) were not permitted to be valued as useful standby equipment in determining the rate base for Logansport. *Logansport v. Northern Indiana Public Service Co. No. 10510.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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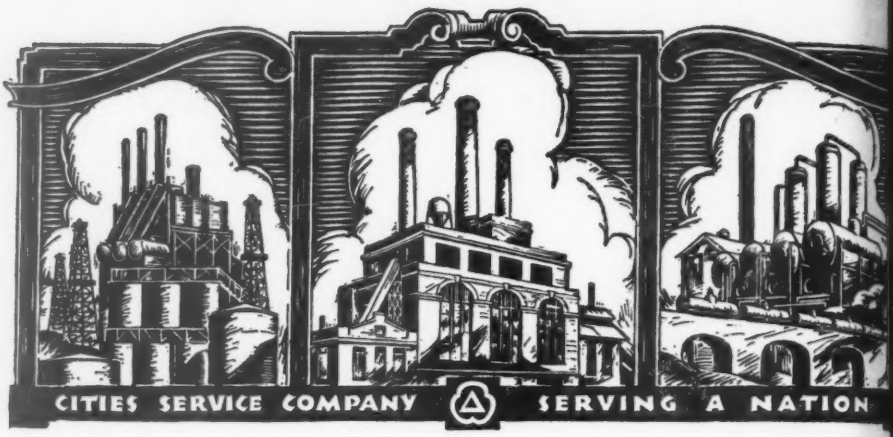

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